

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JULIE DELANEY and
WILLIAM P. DELANEY

Plaintiffs,

v.

ELI LILLY AND COMPANY,

Defendant.

CIVIL ACTION No. 05-CV-10241 (MLW)

**DEFENDANT ELI LILLY AND COMPANY'S
REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Eli Lilly and Company ("Lilly") moved for summary judgment in this case because plaintiffs cannot show that Lilly made the Diethylstilbestrol ("DES") that allegedly caused their injuries. That motion was a straightforward attack on plaintiffs' claims, pointing out that the pill description at issue -- round, white, pill with a cross and no other markings -- was insufficient to identify Lilly when (a) plaintiff has produced *no evidence* tending to establish the stocking and dispensing practices of the Hingham Pharmacy, (b) over 60 other companies made DES available for sale in *national* publications in 1969-'70, and (c) it is impossible to show that the above pill description was exclusive to Lilly.

In their Opposition to Lilly's Motion for Summary Judgment ("Plaintiffs' Opposition" or "Pls. Opp."), plaintiffs' fail to identify any Rule 56(e) evidence that Lilly's white, cross-scored DES pill was unique, or that the Hingham Pharmacy actually did stock and dispense Lilly's DES in 1969-'70. Instead, plaintiffs rely heavily on the speculation of two pharmacists -- Harold Sparr and Phillip Cafferty -- to meet their product identification burden. Lilly took the deposition of Mr. Sparr to explore the extent of his knowledge about the Hingham Pharmacy and

the purported uniqueness of Lilly's white, cross-scored DES pill. Mr. Sparr demonstrated that he has no personal knowledge of the stocking and dispensing practices of *any* pharmacy in Hingham, much less the Hingham Pharmacy in particular; he never visited any pharmacy in Hingham, never reviewed any of their purchasing or dispensing records and does not know which wholesalers, if any, they used. Mr. Sparr's sole claim to "knowledge" of the stocking and dispensing practices of pharmacies in Hingham is a single, non-contemporaneous, hearsay conversation with two pharmacists that worked in an unidentified pharmacy. Finally, Mr. Sparr acknowledged that he cannot say that Lilly was the only manufacturer in the Red or Blue Books to market a white, cross-scored DES pill in 1969-'70 and, indeed, that he never saw the DES made by any company other than Lilly and cannot say what any of the other 59 pills on the national market in 1969-'70 looked like. In short, Mr. Sparr cannot establish either that the Hingham Pharmacy carried only Lilly's DES or that only Lilly's DES matched the relevant pill description.

Mr. Cafferty, now deceased, has also been deposed. He, like Mr. Sparr, admitted that he has no knowledge at all about what any DES product other than Lilly's looked like. He has no basis to assert that Lilly's pill description was unique. He does not and cannot claim any personal knowledge about the stocking and dispensing practices of pharmacies in Hingham. For all these reasons, and those set out more fully below, Lilly's Motion for Summary Judgment should be granted.

A. PLAINTIFFS' HAVE NO PROOF THAT LILLY WAS THE SOLE MANUFACTURER OF A WHITE CROSS-SCORED PILL IN 1969-'70

Plaintiffs rely on an affidavit ("Sparr Affidavit") and a statement ("Sparr Statement") from Harold Sparr, a statement from Philip Cafferty ("Cafferty Statement") and a statement from Julie Zhang ("Zhang Statement") to prove that pill description at issue was exclusive to Lilly.

None of these materials make it more likely than not that Julie Delaney was exposed to Lilly's diethylstilbestrol.

1. The Sparr Affidavit

Plaintiffs rely on the Sparr Affidavit for the assertion that "Lilly's DES was exclusively ubiquitous in the Boston/Hingham Area in the late 1960's and early 1970's." Pls. Opp. at 2-3. Lilly has filed a separate motion to strike the Sparr Affidavit because it does not comply with the requirements of Fed. R. Civ. P. 56(e). Docket No. 49. Mr. Sparr admits that he never worked in any pharmacy in Hingham. *See* Sparr Affidavit, Docket No. 45, App. 7, ¶ 3. He does not claim that he ever visited any pharmacy in Hingham. Mr. Sparr has never reviewed any purchasing or prescription records from any pharmacy in Hingham. Transcript of Deposition of Harold Sparr ("Sparr Tr. II"), at 7, 27, 74-75 (attached as Ex. 1 to Supplemental Affidavit of Brian L. Henninger in Support of Summary Judgment ("Supp. Aff.")). He does not know which wholesalers, if any, were used by the pharmacies in Hingham. *Id.* at 73-74. In short, there is nothing in Mr. Sparr's affidavit making it more likely than not that the Hingham Pharmacy exclusively stocked Lilly's DES as opposed to any of the other 60 brands of DES on the market in 1969-'70.¹

Plaintiffs' also rely on the Sparr Affidavit for the assertion that "Lilly's DES is the only white cross-scored DES pill without any other markings available in Boston/Hingham during 1970." Pls. Opp., at 4. As discussed in Lilly's motion to strike, Mr. Sparr admits that he has

¹ Moreover, Mr. Sparr's statement that "Lilly DES was exclusively ubiquitous in the Boston/Hingham area" is demonstrably false; the Hingham Centre Pharmacy, which is distinct from the Hingham Pharmacy that Ms. Delaney's mother identified as the dispensing pharmacy, carried DES manufactured by Squibb, Burroughs-Wellcome and Lilly in the 1960's. *See* Transcript of Deposition of George Whiton Price in *Lee v. Abbot Labs*, Civil Action No. 768299 (Cal. Sup. Ct.), dated July 29, 1983 ("Price Tr."), at 44 (attached as Ex. 2 to Supp. Aff.). This information was not disclosed to plaintiffs during discovery because (a) it was irrelevant to the stocking and dispensing practices of the Hingham Pharmacy, and (b) Lilly did not know that Mr. Sparr would claim knowledge of the stocking and dispensing practices of the pharmacies in Hingham generally until his affidavit was filed with Plaintiffs' Opposition.

never seen any DES pill other than Lilly's. Sparr Tr. II, at 17, 45-46 (Supp. Aff., Ex. 1). Mr. Sparr's knowledge about the uniqueness of Lilly's white, cross-scored pill is based on a review of a single photograph of that pill, *id.* at 8-9, 16, a review of Lilly's product literature that contained no photograph or description of the pill, *id.* at 18, and a review of the Physician's Desk Reference for 1969-'70 which contained no photograph or description of the pill, *see id.* at 19; *see e.g.* 1969 Physician Desk Reference (Docket No. 45, App. 20) (showing no description or photograph of Lilly's DES pills). Mr. Sparr not only admitted that he could not say one way or the other if Squibb's DES pill fit the pill description at issue in this case, Sparr Tr. II, at 16 (Supp. Aff., Ex. 1), he also admitted that he *could not say* that *none* of the other DES pills marketed by the manufacturers listed in the Red and Blue Books were white and cross-scored, *id.* at 57. Finally, Mr. Sparr acknowledged that he did *nothing* to verify his statement that Lilly's white, cross-scored pill was unique in the DES market; he did not look at pictures of other pills, *id.* at 8-9, 16, nor did he consult any medical or pharmacy journals to substantiate his bold claim, *id.* at 47. Mr. Sparr's statement that cross-scoring was unique to Lilly's DES pill is pure speculation that could not be admitted into evidence at trial and deserves no credence from this Court.

2. The Sparr Statement

Plaintiffs rely on the Sparr Statement for the proposition that Lilly "cornered 94% of the DES market in Boston" in 1969-'70. Pls. Opp., at 4. Lilly has filed a separate motion to strike the Sparr Statement based on Fed. R. Evid. 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993). Docket No. 48. Mr. Sparr's limited sampling and haphazard method provide no support for what the relevant market looked like in 1969-'70. Mr. Sparr has no experience or expertise in market research, but was employed by plaintiffs' counsel to conduct a "survey" designed by Plaintiffs' counsel for the sole purpose of use in litigation

against Eli Lilly. *See* Transcript of Deposition of Harold Sparr in *Bohlin v. Eli Lilly and Company*, Civil Action No. 03-CV-11577 (MEL) (“Sparr Tr.”) Tr. 5-7, 116-119, 126-128, 159-163 (attached as Ex. 1 to Docket No. 48); May 5, 2004 Letter from Aaron M. Levine, Esq., to Harold B. Sparr, R.Ph., D.Ph., M.S. (attached as Ex. 2 to Docket No. 48). Mr. Sparr sampled only 225 of the 4500-5000 Massachusetts pharmacists who were licensed between 1963 and the present. *See* Sparr Tr. at 163-64 (attached as Ex. 1 to Docket 48); Listing of 225 Massachusetts Survey Affidavits (attached as Ex. 3 to Supp. Aff.). The sampling of the unexamined, 40 year old recall of 4% of the pharmacists in Massachusetts (by Mr. Sparr’s account), with no cross-checking of any one’s memory, makes the survey unscientific and inadmissible. Consequently, the Sparr Statement does nothing to make it more probable that Julie Delaney was exposed to Lilly’s DES as opposed to one of the more than 60 other DES manufacturers on the market in 1969-‘70.

3. The Cafferty Statement

Plaintiffs similarly rely on a statement from Philip Cafferty to show that the pill description at issue “fits Lilly’s [DES pill] only, and that the [sic] Lilly’s DES constituted the lion’s share of the Boston DES market. Pls. Opp., at 3. Lilly has also filed a separate motion to strike Mr. Cafferty’s statement because his limited experience with DES and lack of personal knowledge prevents his testimony from assisting plaintiffs with their product identification burden. Mr. Cafferty never worked at the Hingham Pharmacy and, thus, has no personal knowledge of the stocking and dispensing practices of this store. *See* Transcript of Deposition of Phillip Cafferty in *Dean v. Eli Lilly and Company*, 02-CV-11078 (RGS) (“Cafferty Tr.”) at 54 (attached as Ex. 4 to Supp. Aff.). Mr. Cafferty was not even licensed in Massachusetts in 1969-‘70, and therefore never dispensed DES anywhere in Massachusetts during the relevant time period. *See id.* at 54-55, 91-92.

Moreover, Mr. Cafferty admits in his own statement that “I have never seen or heard of a DES product not manufactured by Eli Lilly.” *Id.* at 4. Mr. Cafferty was employed as a detailman for Lilly from 1965 until 1984, but he never detailed DES and his territory never included Hingham, Massachusetts. *Id.* at 65, 82-84. Having never seen any of the non-Lilly DES products on the Massachusetts market in 1969-’70, and having never dispensed DES in Massachusetts during the 1960’s, Mr. Cafferty has no basis for testifying that the DES pill description at issue applies exclusively to Lilly’s pill.

4. The Zheng Statement

Plaintiffs also submit the statement of a clerk in their attorney’s office who states that she could find no other 25 mg DES product that was white, round, and cross-scored among photographs in Plaintiffs’ attorney’s “firm archives.” *See* Docket No. 45, App. 9. Nothing suggests that the photographs examined represent a complete set of the DES products on the market in 1969 and 1970, or even that any of the photographs show a product marketed in these years. The affidavit does not show that the photographs reviewed by Ms. Zheng depict pills on the market in 1969 and 1970. Rule 56(e) requires that an affidavit show affirmatively that the affiant is competent to testify to the subject matter. Here the subject matter of relevance is the description of the DES products on the market in 1969 and 1970, but the affidavit does nothing to show that the relevant products (*i.e.* the products from 1969-’70) were reviewed at all. Moreover, based on prior knowledge of plaintiffs’ counsel’s “firm archives,” Lilly asserts that at least 41 of the over 60 DES manufacturers listed in the 1969 Red and Blue Books were not represented among the photographs referenced in the Zheng Affidavit. *See* 1969 Red and Blue Books (attached as Exs. 8 and 10 to Docket No. 40).² Lilly calls upon plaintiffs to dispute the

² Plaintiffs argue that the Red and Blue Books, listing over 60 DES manufacturers in 1969-’70, are irrelevant because they do not represent a national market and are indecipherable by an average juror. *See* Plaintiffs

assertion that at least the companies listed in the footnote below are not represented in their counsel's "firm archives."³ Unless plaintiffs can show what these manufacturers' DES pills looked like during the relevant years, they cannot meet their burden. Neither plaintiffs nor Lilly knows the descriptions of all of the DES pills on the market in 1969 and 1970. Therefore, Ms. Zheng's statement does not provide support for plaintiffs' product identification burden.

B. LILLY'S SUMMARY JUDGMENT BURDEN DOES NOT INCLUDE IDENTIFICATION OF AN "ALIBI" DES PILL

Plaintiffs' make too much of the fact that Squibb's white cross-scored DES tablet cannot serve as an "alibi" pill in this case. Lilly has never asserted as much. Lilly pointed to the Squibb pill in its Motion for Summary Judgment not as an alibi, but as an example of the fact that many manufacturers may have made white, cross-scored pills in 1969-'70. There were at least 60 manufacturers in the DES market that year. Neither Lilly nor plaintiffs nor plaintiffs' purported pharmacy "expert" know what all those DES pills looked like. What the parties do know is that more than one DES manufacturer made a white, cross-scored DES pill. *See* John J. Hefferon, *Description of the Identification Guide*, 182 JAMA 1146, 1195 (1962) (attached as Ex. 11 to Docket No. 40). Moreover, cross-scoring is a practical rather than ornamental characteristic; it

Opposition at 15-16. Plaintiffs' own expert admits that these publications list the drugs that were available in the national supply chain to be purchased. *See* Sparr Tr., at 101-103 (attached as Ex. 1 to Docket No. 49). No court has agreed with plaintiffs that the Red and Blue Books were somehow not competent to show which manufacturers were in the national DES market during the relevant time period. *See Galvin II*, Civ. Action No. 03-1797 at 7, n.3 & 4; *see also Galvin I*, Civ. Action No. 03-CV-1797 (CCK) (appeal pending) (attached as Ex. 12 and 13 to Docket No. 40). No expert is required to interpret the information listing DES products for sale; a lay juror can read it and understand that many companies besides Lilly sold DES in 1969 and 1970.

³ It is Lilly's belief that plaintiffs' counsel's "firm archives" do not include photographs of the following manufacturers' DES pills listed as available in the national market in the 1969 Red and Blue Books: ABA Pharmaceuticals, American Drug Products, American Quinine, Archer Taylor, Arcum, Atlas Pharmaceuticals, Barry-Martin, Bell Pharmaceuticals, Blue Cross, Bowman, Bundy, CMC, Columbia Medical, Daniels, Faraday, Fremont, Gotham, Hance Brothers & White, Harvey Laboratories, Kasar, Kenyon Drugs, King Laboratories, Klug Laboratories, Lit, Massengill, North American Pharmaceuticals, Pameco, Pharmex, Preston Franklin, Purepac Pharmaceuticals, Raway, Reiss Williams, Rondex, Strong Cobb American, Superior Pharmaceuticals, Supreme, TMCO, Torigian, Vita-Fore, Vista Pharmaceuticals, and Winsale.

cannot be that only Lilly, among all manufacturers, had the ability to cross-score their pills to make them easier to cut into smaller dosages. The cross-score is not a trademark or logo with some indicia of exclusivity. These facts make it more likely than not that other DES manufacturers made pills that fit the pill description of Julie Delaney's mother. Plaintiff's pharmacy "expert," Mr. Sparr, demonstrated at deposition that he has no knowledge about the difficulty or frequency of cross-scoring in pill production in the 1960's or 1970's. *See* Sparr Tr. II, at 49, 52-53 (Supp. Aff., Ex. 1).

Plaintiffs' failure to appreciate their product identification burden under Massachusetts law may stem from the fact that they rely on case law from Iowa, Illinois, Ohio, Michigan, and beyond. *See id.* at 10-11. As Lilly has already argued, *Massachusetts* law puts the burden on plaintiffs to submit evidence showing that it is "more probable than not" that their injuries were caused by Lilly's product. *Spencer v. Baxter Int'l., Inc.*, 163 F.Supp.2d. 74, 78 (D. Mass. 2001). Rather than submitting evidence that would meet this burden, Plaintiffs argue that Lilly has not identified another manufacturer whose product might have caused their injuries. Setting aside the fact that Lilly has identified such manufacturer (and there may be others), Massachusetts law does not require defendants to identify alibi manufacturers to win summary judgment. *See Spencer*, 163 F.Supp.2d at 78 (granting summary judgment to defendants where plaintiffs could not identify which one of two available blood products caused their injuries); *see also Carroll v. Xerox Corp.*, 294 F.3d 231, 236 (1st Cir. 2002) (stating that "[o]nce the moving party has pointed to the absence of adequate evidence supporting the nonmoving party's case, the *nonmoving party* must come forward with facts that show a genuine issue for trial") (emphasis added). In this case, where the only competent evidence of product identification is a pill

description, it is *plaintiffs'* burden to prove that Lilly manufactured the only pill meeting that description. Plaintiffs have not and cannot come close to meeting this burden.

C. PLAINTIFFS CANNOT AVOID SUMMARY JUDGMENT WITHOUT COMPETENT EVIDENCE OF THE HINGHAM PHARMACY'S STOCKING AND DISPENSING PRACTICES

A clear pattern in recent DES litigation has emerged with respect to summary judgment motions premised on a plaintiff's failure to produce sufficient product identification evidence. Where plaintiff cannot support a non-exclusive pill description with competent testimony from a pharmacist identifying a particular brand as the brand stocked and dispensed during the relevant time period, summary judgment should be granted. *Bortell v. Eli Lilly and Company*, 2005 WL 3211719 (D.D.C. Oct. 20, 2005) (granting summary judgment where pharmacists' testimony regarding stocking and dispensing practices of relevant pharmacy was excluded as incompetent under Fed. R. Civ. P. 56(e) because pharmacists unavailable for trial); *Galvin v. Eli Lilly and Company*, 2005 WL 3272124 (D.D.C. Sept. 12, 2005) (denying motion to amend order granting summary judgment in part because affidavit from pharmacist regarding stocking and dispensing practices of relevant pharmacy was contradictory and untimely and thus incompetent under Rule 56(e)).

As Lilly has demonstrated in its motions to strike the Sparr Affidavit, the Sparr Statement and the Cafferty statement, neither Harold Sparr nor Philip Cafferty have any competent evidence relating to the stocking and dispensing practices of the Hingham Pharmacy. *See* Docket Nos. 47-49. Neither man worked at or visited the Hingham Pharmacy, neither spoke with other pharmacists who worked there and neither reviewed Hingham Pharmacy records. In short, neither Sparr nor Cafferty can establish that they have any personal knowledge about the Hingham Pharmacy as Rule 56(e) requires. What is more, neither Sparr nor Cafferty are qualified to opine about Massachusetts DES market share based on the limited number of retail

pharmacies in which they worked, the limited experience they had with non-Lilly DES and the fundamentally flawed “market research” they conducted in the employ of plaintiffs’ counsel. Without competent pharmacist testimony to support their non-exclusive pill description, plaintiffs’ cannot meet their burden on summary judgment.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Lilly’s Memorandum in Support of its Motion for Summary Judgment, Lilly respectfully requests that this Court enter summary judgment in its favor on all claims.

Respectfully submitted,

FOLEY HOAG LLP

/s/ Brian L. Henninger

James J. Dillon (BBO # 124660)

Brian L. Henninger (BBO # 657926)

FOLEY HOAG LLP

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Boston, MA 02111-2600

(617) 832-1000

Dated: November 20, 2006

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JULIE DELANEY and
WILLIAM P. DELANEY

Plaintiffs,

v.

ELI LILLY AND COMPANY,

Defendant.

CIVIL ACTION No. 05-CV-10241 (MLW)

**SUPPLEMENTAL AFFIDAVIT OF BRIAN L. HENNINGER
IN SUPPORT OF DEFENDANT ELI LILLY AND COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

I, Brian L. Henninger, being first sworn on oath, say that the following is true and correct:

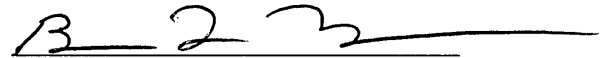
1. I am an attorney at Foley Hoag LLP, counsel for Eli Lilly and Company ("Lilly") in this action. I am duly admitted to practice in the District of Massachusetts.

2. Attached as Exhibit 1 are excerpts from a true copy of the transcript of the deposition in this action of Harold Sparr.

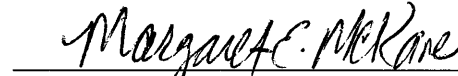
3. Attached as Exhibit 2 is an excerpt from a true copy of the transcript of the deposition of George Whiton Price in *Lee v. Abbot Labs*, Civil Action No. 768299 (Cal. Sup. Ct.), dated July 29, 1983.

4. Attached as Exhibit 3 is a true copy of Exhibit 7 to Mr. Sparr's October 12, 2004 "study," listing 225 Massachusetts pharmacists who responded to his survey.

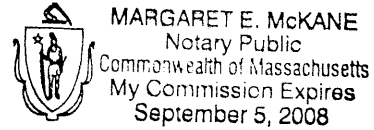
5. Attached as Exhibit 4 are excerpts from a true copy of the transcript of the deposition of Phillip Cafferty in *Dean v. Eli Lilly and Company*, 02-CV-11078 (RGS).


Brian L. Henninger

Sworn before me this 20th day of November, 2006.


Notary Public

My commission expires: 9/5/08



Ex. 1

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3 IN THE UNITED STATES DISTRICT COURT

4 FOR THE DISTRICT OF COLUMBIA

5

6

7 JULIE DELANEY and WILLIAM P.

8 DELANEY,

9 Plaintiffs, C.A. No. 04-CV-00349

10 v. (ESH)

11

12 ELI LILLY & COMPANY,

13 Defendant.

14

15

16

17 *****

18 DEPOSITION OF HAROLD SPARR

19 Monday, October 30, 2006

20 210 Nahanton Street

21 Newton, Massachusetts

22 12:25 p.m. to 1:44 p.m

23 Reporter: Linda M. Grieco

24

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1 with you? I only brought one copy. Any documents
2 with you relating to the statement that, in your
3 most recent statement in these cases that you can
4 state with an absolute certainty that the only
5 popular DES product, which appeared round, white and
6 cross-scored about the size of an aspirin without
7 any other imprint or logo, was the Lilly DES 25
8 milligram product?

9 A. No.

10 MR. LEVINE: I advised Mr. Sparr that
11 you have previously received --

12 MR. DILLON: I'm sorry, Aaron, you'll
13 have to speak up a little bit.

14 MR. LEVINE: I advised Mr. Sparr that
15 you have previously received all the documents
16 enumerated in schedule A, and it wasn't necessary to
17 bring them.

18 MR. DILLON: Well, I'm quite curious to
19 find out what documents Mr. Sparr has or has
20 reviewed. So let me just --

21 MR. LEVINE: He hasn't reviewed anything
22 that would elucidate the Hingham Drugstore by way of
23 a document.

24 MR. DILLON: Okay, well, it's not just

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1 about the Hingham Drugstore, although that would
2 certainly be a main topic of conversation. But it's
3 not just about that.

4 Q. So let me ask first, Mr. Sparr, do I recall
5 that you said that you did receive this list of
6 documents; is that correct?

7 A. Yes, I received it yesterday afternoon when
8 I returned home.

9 Q. Do I understand correctly that you have no
10 documents in your possession that relate to any of
11 these; is that correct?

12 A. That's correct.

13 Q. Now, have you reviewed any documents that
14 relate or pictures that relate to this first
15 statement about the exclusivity of a particular
16 physical description of DES?

17 A. Yes, I have seen pictures, and I have seen
18 the tablets.

19 Q. Okay. Now, you have seen pictures?

20 A. Uh-hum.

21 Q. First tell me, what pictures have you seen?

22 A. I saw a picture of a Lilly 25 milligram
23 Diethylstilbestrol plain tablet and a picture of the
24 bottle.

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1 Q. Okay. Now, I'll interrupt you there. Let
2 me say where did you see those photographs?

3 A. One was given to me.

4 Q. Given to you by whom?

5 A. By Mr. Levine.

6 Q. Do you understand when the pill in that
7 picture was made?

8 A. I remember it being made in the '50's and
9 '60's, into the early '70's.

10 Q. So you remember what you saw in that picture
11 as having been made into the early '70's; is that
12 correct?

13 A. That's correct.

14 Q. So it's your testimony that your memory is
15 that the Lilly 25 milligram DES pill fit that
16 description of plain, white, cross-scored with no
17 markings on it; is that correct?

18 A. That's correct.

19 Q. Are you as certain about that memory about
20 Lilly's pills as you are about everything else that
21 we're going to be talking about?

22 A. Yes.

23 Q. And as certain as everything else in the
24 statement that you gave to Mr. Levine in September

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1 A. No, I've never seen the Squibb pill.

2 Q. You've never seen the Squibb pill?

3 A. No.

4 Q. Okay.

5 A. I'm taking your word for it.

6 Q. All right. So if you've never seen the

7 Squibb pill, do I understand correctly, then, that

8 you could not say whether the Squibb pill fit the

9 same description as the mother's description?

10 A. That's correct.

11 Q. You can't say one way or the other?

12 A. No, because I never carried the Squibb item.

13 Q. So you've never seen the Squibb pill?

14 A. No.

15 Q. Okay. Let me ask you about -- all right.

16 Now, you mentioned when you talked about pictures

17 that you saw about -- you said you saw a picture of

18 a Lilly pill and a Lilly bottle. Are there any

19 other pictures that you saw?

20 MR. LEVINE: I think Mr. Sparr went

21 through all the photographs.

22 MR. DILLON: Mr. Levine, I would be very

23 appreciative if you would allow Mr. Sparr to

24 testify. He's perfectly capable of testifying.

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1 He's your expert. So please do not undercut his
2 testimony by so blatantly on the record trying to
3 steer him.

4 A. I do remember the enseals. It was a red
5 coated tablet.

6 Q. All right. Are there any other pictures
7 that you saw? You mentioned having seen pictures.

8 A. No.

9 Q. So the documents that you have looked at,
10 didn't bring with you and may not even have in your
11 possession, that relate to this paragraph number one
12 are the pictures of the Lilly pill and the Lilly
13 tablet; is that correct?

14 A. That's correct.

15 Q. Let's turn to paragraph two. I asked for
16 all literature which you relied on in making the
17 statement set out in paragraph one. Well, that's
18 the same -- this is the same thing. I mean, it's
19 pictures and literature. Is there any literature
20 that you've looked at, any medical articles or
21 anything else that you've looked at about the
22 physical description of the DES pills?

23 A. Just the Lilly literature that they handed
24 out to the doctors on Diethylstilbestrol.

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1 Q. Mr. Sparr, when was it that you saw the
2 Lilly literature that they handed out to doctors?

3 A. Back in the '60's.

4 Q. Did you have that at the time in your store?

5 A. The literature?

6 Q. Yes.

7 A. I did have a copy of it. You know, I have
8 no idea where it is now.

9 Q. But even though it was handed out to
10 doctors, it's something that you as a pharmacist
11 had?

12 A. That's correct.

13 Q. Is there any other literature relating to
14 the description of the pill besides the Lilly
15 literature that you've just mentioned?

16 A. No. The literature wouldn't give the
17 description of the pill. I don't believe it gave a
18 description of the pill. It just told the benefits
19 of Diethylstilbestrol.

20 Q. Let me ask you about number three, if I can.
21 In the statement that's been marked as Exhibit 1,
22 you make reference to PDR and Red Book and Blue Book
23 and having reviewed them. Do you know what Red Book
24 and Blue Book and what PDR's you have reviewed?

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1 A. I believe they were the 1969 or the 1970 Red
2 and Blue Book and the PDR, also.

3 Q. When did you review them, sir?

4 A. Quite a few months ago.

5 Q. And you reviewed them with Mr. Levine; is
6 that correct?

7 A. No, they were sent to me. Then I returned
8 them to Mr. Levine.

9 Q. How about the PDR, do you remember anything
10 about the PDR that you reviewed?

11 A. Yes, I saw a photograph, photostated pages
12 from the PDR.

13 Q. Do you know what pages from the PDR they
14 were?

15 A. They were from the Lilly product.

16 Q. Did you review the entire PDR?

17 A. No.

18 Q. Just the part that was sent to you by
19 Mr. Levine; is that correct?

20 A. Correct.

21 Q. Are there any other Red Book and Blue Books
22 that you rely on to make the statement that's
23 Exhibit 1?

24 A. No.

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1 indicates to me that the majority of the

2 Diethylstilbestrol that this gentleman carried,

3 other than one prescription, was Eli Lilly.

4 Q. What, if anything, does that tell you about

5 Hingham, sir?

6 A. Well, Hingham is part of Greater Boston.

7 Q. Well -- so you're making the assumption that

8 because this gentleman in Lynnfield carried mostly

9 Lilly, that Hingham --

10 A. And everybody else that I have spoken to.

11 Q. All right.

12 A. In the whole Greater Boston area.

13 Q. Okay. Well, we're going to have to go

14 through that I guess in some detail. Before we

15 leave the document request, let me turn to the last

16 one, number five.

17 A. Yeah.

18 Q. Any documents including statements from

19 pharmacists relating to the stocking and dispensing

20 practices of any pharmacy operating in Hingham,

21 Massachusetts?

22 A. No.

23 Q. You have no documents about that?

24 A. No. I do have a -- I had a verbal

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1 conversation with two pharmacists that practice in
2 Hingham.

3 Q. All right. So you have no documents, that's
4 clear?

5 A. No.

6 Q. Now you said you had a conversation with two
7 pharmacists who practiced --

8 A. I worked with two pharmacists that owned a
9 store in Hingham. I worked with them for about a
10 year.

11 Q. Okay. Now, first, who were the two
12 pharmacists that we're talking about?

13 A. Arnold Shapiro.

14 Q. I beg your pardon?

15 A. Arnold Shapiro and Lloyd Scholler.

16 Q. Lloyd Scholler?

17 A. Uh-hum.

18 Q. Can you spell his name, please?

19 A. S-C-H-O-L-L-E-R, I believe.

20 Q. And you said you worked with them?

21 A. Uh-hum.

22 Q. When did you work with them?

23 A. About 1997 or 1998.

24 Q. Where did you work with them?

00029

1 A. At the Massachusetts Medicaid Department.

2 Q. Now, you said you had a conversation with
3 these two pharmacists. When was this conversation?

4 A. Sometime in that time frame.

5 Q. So in 19 --

6 A. And the conversation came up because there
7 was a report of -- there was a report of a lawsuit
8 against Lilly for the Diethylstilbestrol, and we got
9 into a conversation about it.

10 Q. And what was the conversation, sir?

11 A. Conversation was that we discussed the
12 problems with Diethylstilbestrol back in the '60's
13 and '70's, '50's, '60's and '70's. And they agreed
14 with me that the Cadillac of the industry was Eli
15 Lilly. And even though there may have been generics
16 later on, that they probably stocked the Eli Lilly.

17 Q. And this is a conversation you had in 1997
18 and 1998; is that right?

19 A. Correct.

20 Q. Did you make any notes about that
21 conversation?

22 A. No.

23 Q. Have you spoken to Mr. Shapiro or
24 Mr. Scholler about this since?

00030

1 A. Maybe a year or two years ago.

2 Q. How did it come up then?

3 A. Because I asked them for statements.

4 Q. Did they give you statements?

5 A. No, they didn't want to get involved.

6 Q. Did they not want to say that they only
7 carried Lilly?

8 A. Nope.

9 Q. What store do they work at?

10 A. I believe their store was Hingham Pharmacy.

11 Q. Do you think that they were the ones who
12 owned Hingham Pharmacy?

13 A. I know they had a drugstore in Hingham
14 together.

15 Q. Okay. Well, this is a good time I guess to
16 ask about do you know how many pharmacies there were
17 in Hingham in 1969 and 1970?

18 A. I'm estimating there must have been about
19 six.

20 Q. Can you name them?

21 A. No.

22 Q. Now, why --

23 A. I know one of them was -- there was a small
24 chain on the South Shore. I can't recall the name

00031

1 of it, but I know they had -- I think they had a
2 store in Hingham.

3 Q. But you don't remember the name of it?

4 A. No.

5 Q. Now, do you know the names of the stores in
6 Hingham in 1969 and 1970?

7 A. No. Other than Hingham Pharmacy, no.

8 Q. How do you know the name Hingham Pharmacy?

9 A. Because that was a name that was discussed.

10 Q. That was a name that was discussed with
11 Mr. Levine about this case?

12 A. No.

13 Q. Are you sure it wasn't Hingham Center
14 Pharmacy?

15 A. No, I'm not sure it wasn't Hingham Center
16 Pharmacy.

17 Q. In fact, it could have been West Hingham
18 Pharmacy?

19 A. I don't think so.

20 Q. But you really can't tell me at this remove
21 whether this was Hingham Pharmacy or West Hingham
22 Pharmacy -- I'm sorry, Hingham Pharmacy or Hingham
23 Center Pharmacy; is that correct?

24 A. That's correct.

00032

1 Q. In fact, I think I've asked you if you know
2 the names of them. I think you told me you didn't
3 know the names of the pharmacies in Hingham; is that
4 correct?

5 A. That's correct.

6 Q. Just to go quickly back over your
7 background. I understand that you worked at Sparr's
8 Drug from 1958 to 1969, your store, and then you
9 worked at Robert's Pharmacy in Belmont --

10 A. Uh-hum.

11 Q. -- from 1970 to 1976; is that right?

12 A. Correct.

13 Q. Were you working full-time at that time in
14 those stores?

15 A. Yes.

16 Q. So I take it that while you were working
17 full-time in those stores, you weren't working in
18 any other pharmacy anyplace; is that correct?

19 A. No, that's not correct. I did work
20 part-time both in Ivy Drug and Jacobson's Pharmacy.
21 It was a second job that I had when I was working
22 for my father at Sparr's Drugstore.

23 Q. But that was before you owned Sparr's store,
24 your father took over Sparr's store in 1958; is that

00045

1 Q. When you say popular, I mean, how many
2 prescriptions would there be in these other stores?

3 A. Each store filled a different quantity of
4 prescriptions. I mean, I don't know exactly how
5 many prescriptions each store filled.

6 Q. So, in fact, the truth of the matter is,
7 Mr. Sparr, that you really don't know how many DES
8 prescriptions were filled in any store, except for
9 the ones that you were in; is that correct?

10 A. That's correct.

11 Q. Okay. Now, Mr. Sparr, let's go back to this
12 issue of the pill description. I think you told me
13 that you remember seeing a picture of Lilly, and
14 that you had never seen a Squibb product; is that
15 correct?

16 A. I don't believe I did.

17 Q. All right. Now I have a whole bunch of Red
18 Book and Blue Book listings here. I am prepared to
19 go through each one of these and ask you what their
20 product looked like, but let me see if I can
21 shortcut it. Is there any DES product that you have
22 ever seen other than Lilly's DES product?

23 A. No.

24 Q. So Lilly is the only one you ever saw?

00046

1 A. Correct.

2 Q. So just by way of example, if I asked you
3 about American Pharmaceutical Company's DES, you
4 wouldn't be able to tell me what it looked like?

5 A. No.

6 Q. If I asked you about Merck's DES, you
7 wouldn't be able to tell me?

8 A. No.

9 Q. Upjohn's DES?

10 A. No.

11 Q. I don't want to go through all of these, but
12 if I went through every DES that's listed in the Red
13 Book and Blue Book that you've seen, you would tell
14 me that you have not seen any of them except for
15 Lilly; is that correct?

16 A. That's correct.

17 Q. Now, with that as background, Mr. Sparr, can
18 you tell me why is it that you think that the Lilly
19 pill was distinctive? Why is that unique?

20 A. Because it was cross-scored.

21 Q. I understand it was cross-scored. Are you
22 telling me that there are no other cross-scored
23 pills in existence?

24 A. I do not know of any other cross-scored

00052

1 there, about cross-scoring?

2 A. Yes.

3 Q. Why is that exotic?

4 A. Because first of all, it's not easy to
5 break. They didn't have the pill cutters that we
6 have today for patients to cut their tablets, as a
7 money saving object.

8 Q. Okay. They didn't have the breakers that
9 they've got now. But, sir, in terms of making a
10 pill, as far as you know, it's no more complicated
11 to make a pill with a cross-score than with a score,
12 is it, sir?

13 MR. LEVINE: I object.

14 A. I have no idea.

15 MR. DILLON: Mr. Levine, this is the
16 point. He has no idea.

17 A. I'm not a manufacturer, and when we made
18 tablets in school and college, they weren't scored
19 at all. I mean, we made -- if they wanted us to
20 make a five milligram tablet, we weighed out five
21 milligrams of the active ingredient plus the
22 inactive ingredients.

23 Q. Got you. So in terms of whether it was
24 feasible for anybody to do cross-scoring, since

00053

1 you've never been a manufacturer, you just don't
2 know if anybody else could have done it; is that
3 right?

4 A. I wouldn't know.

5 Q. All right. So since you wouldn't know
6 whether they could have done it, and you haven't
7 seen any DES other than Lilly's, doesn't it follow,
8 Mr. Sparr, that you can't tell the court and tell a
9 jury that the only DES that was white and
10 cross-scored was Lilly? You just don't have the
11 basis, do you?

12 MR. LEVINE: Excuse me --

13 A. Nobody else ever mentioned to me about a
14 cross-scored tablet.

15 Q. I understand nobody mentioned it to you.
16 But if you want to make this grand statement, the
17 broad statement that no one else made it --

18 MR. LEVINE: You're basing it for seven
19 or eight different factors, including the study --

20 MR. DILLON: Mr. Levine, you may not
21 testify.

22 MR. LEVINE: Including the
23 discussions --

24 MR. DILLON: You may not testify,

00057

1 that, let me be clear that I understand that you
2 have spoken to people about white cross-scored DES,
3 and you've spoken to some people in the Boston area.
4 But as a broad statement, do you say or do you not
5 say that the only company out of all the ones listed
6 in the Blue Book and Red Book that made DES -- let
7 me start over again, I'm sorry. That's bad.

8 Mr. Sparr, given what we've talked about
9 that you've only ever seen Lilly's DES, and that
10 there are many, many companies that were marketing
11 DES as listed in the Blue Book and Red Book, do you
12 agree with me --

13 A. I'm glad you said marketing and not
14 manufacturing.

15 Q. Do you agree with me that you cannot tell us
16 that none of these other DES pills --

17 A. I can't tell you.

18 Q. You can't say that none of the others were
19 white and cross-scored?

20 A. I cannot say it.

21 Q. They may have been, they may not have been.
22 You don't know; is that right?

23 A. All I know is what was popular in the
24 Greater Boston area.

00073

1 you're going to have to take the deposition.

2 MR. DILLON: I haven't asked him about

3 the survey. But that's okay, he can review

4 everything he wants.

5 MR. LEVINE: Yes.

6 MR. DILLON: All right.

7 MR. LEVINE: It probably won't be until

8 after the first of the year or at least early

9 December. It's going to take two weeks for me to

10 get this deposition back.

11 MR. DILLON: A couple of questions about

12 Hingham, may I?

13 MR. LEVINE: Go ahead.

14 Q. Mr. Sparr, I take it that you -- well, do

15 you know for the sort of six pharmacies that you

16 think may have been existing in Hingham, do you know

17 who their wholesalers were?

18 A. Not specifically. How would I know that?

19 Q. Right.

20 A. But I can tell you who the popular

21 wholesalers were.

22 Q. Well, I mean, but just to be clear, in terms

23 of the Deepman Brother's store in Hingham, you

24 couldn't tell me who their wholesalers were; is that

00074

1 right?

2 A. No.

3 Q. And you couldn't tell me if that store, for
4 example, bought directly from manufacturers instead
5 of going through wholesalers; is that correct?

6 A. No.

7 Q. And that would be true for any store in
8 Hingham I would name in 1969 and 1970; is that
9 correct? You have to give an oral answer.

10 A. Oh, yes.

11 Q. And that would be true for the Hingham
12 Pharmacy as well, you don't know what their
13 wholesalers were; is that correct?

14 A. No.

15 Q. And you don't know if they bought their
16 products more from -- direct from pharmacy companies
17 or from wholesalers; is that right?

18 A. Right.

19 Q. I take it you haven't looked at any purchase
20 records for any of those stores to see what they
21 purchased; is that correct?

22 A. No.

23 Q. And you haven't looked at any prescriptions
24 from those stores to see what they dispensed; is

00075

1 that correct?

2 A. No.

3 Q. So is it fair to say, Mr. Sparr, that in
4 terms of your capacity to observe and know about the
5 DES dispensed in Hingham, you really haven't had the
6 opportunity to see anything about what was actually
7 done in Hingham; is that correct?

8 MR. LEVINE: Except for --

9 A. Other than the conversation that I had with
10 those two pharmacists.

11 MR. LEVINE: -- five different sources
12 of information.

13 Q. Other than those two pharmacists; is that
14 correct?

15 A. Correct.

16 MR. DILLON: Mr. Levine, I will now let
17 you go to your meeting. We'll suspend this
18 deposition, and we'll pick it up when we need to or
19 when Mr. Sparr is able to. Is that agreed?

20 MR. LEVINE: Okay.

21 MR. DILLON: Thank you.

22 (Whereupon, at 1:44 the deposition
23 suspended)

24

Ex. 2

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STATE OF CALIFORNIA

San Francisco, ss

Superior Court
No. 768299

* * * * *
*
MARGARET LEE *
*
vs. *
*
ABBOTT LABORATORIES, ET AL *
*
* * * * *

DEPOSITION of GEORGE W. PRICE, a witness called on behalf
of the Defendant, taken pursuant to Notice under the California
Rules of Civil Procedure, before Lynn A. Leonard, a Registered
Professional Reporter and Notary Public within and for the
Commonwealth of Massachusetts, at the law offices of Rivkind,
Baker & Golden, 25 Braintree Hill Park, Braintree, Massachusetts,
on Friday, July 29, 1983, commencing at 10 a.m.

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1 A. Yes.

2 Q. That would have been in the years, 1950, '51?

3 A. 1950, yes.

4 Q. During that time, do you have any
5 recollection of filling prescriptions for
6 Stibestrol at the pharmacy?

7 A. Yes.

8 Q. Do you recall what dosage you were
9 filling at that time?

10 A. Not really, no.

11 Q. Do you know a purpose the medication was
12 being prescribed for at that time?

13 A. Generally, for a woman to hold a baby
14 that had misscariages and so forth.

15 Q. Do you recall what dosage the pharmacy
16 carried in 1950 and '51?

17 A. It carried all strengths.

18 Q. Based upon your review of the records
19 and your own recollection, do you recall what
20 manufacturers you were using in 1950 and '51?

21 A. I do now, Lilly, Squibb, and B&W.

22 Q. Were there any other manufacturers of
23 DES that you recall carrying in 1950 --

24 A. -- not to my knowledge.

Ex. 3

4/21/2004

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1:44 PM

Aaron's Designations	Actual Location and Mileage	State	Pharmacist's Name	CASE	Case Worker	Address	Lilly Only	TOTAL	Statement Date
1 Baltimore	Baltimore	Maryland	Weiner, Philip Paul	Eckert		5 Stirrup Court, Pikesville, MD 21208	only Lilly	227	1991
2 Baltimore	Bladensburg, 37 miles	Maryland	Cohen, Art	Killerlane		2709 Hewitt Ave., Wheaton, MD	stocked only Lilly		1990
3 Baltimore	Langley Park, 32 miles	Maryland	Maine, Edward	Kopper		9514 Buck Wodge Court, Adelphi, MD	stocked only Lilly		1991
4 Baltimore	Towson, 14 miles	Maryland	Shure, Arthur	Deters		3 Pomona West Apartment, Pikesville, MD	most likely Lilly		1990
5 Boston	Arlington	Massachusetts	Cavaretta, Philip	MA Mktshr	Sparr	Shore Road, Ogunquit, ME	Lilly only		2003
6 Boston	Arlington	Massachusetts	Epstein, David M.	MA Mktshr	Sparr	266 Bishops Forest Drive, Waltham, MA	Lilly only		2003
7 Boston	Belmont	Massachusetts	Sugarman, H. Arthur	MA Mktshr	Sparr	2115 Potomac, Southfield, MI 48076	Lilly only		2004
8 Boston	Belmont	Massachusetts	Venuti, Joseph	MA Mktshr	Sparr	2 Hardy Road, Bedford, MA	Lilly only		2004
9 Boston	Beverly	Massachusetts	Tilton, Richard	MA Mktshr	Sparr	33 Park Street, Danvers, MA	Lilly only		2004
10 Boston	Boston	Massachusetts	Dupree, Harold	Nuttall-Bodin		address not on statement	Lilly only		1999
11 Boston	Boston	Massachusetts	Gordon, Howard			231 Nahanton St., Newton, MA	Lilly only		2002
12 Boston	Boston	Massachusetts	Oppenheim, Gordon			28 Grace Road, Newton, MA 02459	Lilly		2002
13 Boston	Boston - Jersey Street Boston - Beelen (sp?) Street Cambridge	Massachusetts	Cohen, Robert B.	MA Mktshr	Sparr	571 Commonwealth Avenue, Newton Centre, MA 02459	Lilly only		2003
14 Boston	Boston - Medical Center	Massachusetts	Alvino, Gloria	MA Mktshr	Sparr	1660 Gulf Boulevard #531, North Redington Beach, FL 33708	1) "mind's eye" - Lilly 2) X-ed out "no recollection of any other brand"		2003
15 Boston	Boston - Medical Center	Massachusetts	Fitzpatrick, Barbara	MA Mktshr	Sparr	1660 Gulf Boulevard #531, North Redington Beach, FL 33708	1) "mind's eye" - Lilly 2) X-ed out "no recollection of any other brand"		2003
16 Boston	Braintree	Massachusetts	Alexis, George	MA Mktshr	Sparr	45 Settlers Path, Marshfield, MA 02050	Lilly only		2003
17 Boston	Braintree	Massachusetts	Camello, Edward L.	MA Mktshr	Sparr	199 Oak Grove Road, Vassalboro, ME 04889	Lilly only		2004
18 Boston	Bridgewater	Massachusetts	Paulive, Sumner	MA Mktshr	Sparr	217 Braemoor Road, Brockton, MA	Lilly only		2004
19 Boston	Brighton	Massachusetts	Kelly, Charles P.	MA Mktshr	Sparr	80 Laurence Lane, Belmont, MA	1) Lilly 2) Also Squibb's Silbetin		2003
20 Boston	Brighton	Massachusetts	Rosenfield, David	MA Mktshr	Sparr	24 Perrault Road, Needham, MA 02494	Lilly only		2003
21 Boston	Brighton	Massachusetts	Stalhi, Joseph	MA Mktshr	Sparr	84 University Road, Brookline, MA 02445	Lilly only		2003
22 Boston	Brockton	Massachusetts	Goldstein, Harold	MA Mktshr	Sparr	91 Shaw Farm Road, Canton, MA	Lilly only		2004
23 Boston	Brookline	Massachusetts	Arrigo, Joseph J.	MA Mktshr	Sparr	57 South Street, Franklin, MA 02038	Lilly only		2004
24 Boston	Brookline	Massachusetts	Levine, Stanley P.	MA Mktshr	Sparr	67 Perkins Street, West Newton, MA 02465	Lilly only		2004
25 Boston	Brookline	Massachusetts	Shapiro, Alan	Bohlin	Steve	36 Greenwich Road, Horwood, MA 02062	Lilly only		2004
26 Boston	Brookline	Massachusetts	Stuchins, Burt	MA Mktshr	Sparr	99 Pine Street, Natick, MA	Lilly only		2003

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Aaron's Designations	Actual Location and Mileage	State	Pharmacist's Name	CASE	Case Worker	Address	Lilly Only	Statement Date
Boston	Cambridge	Massachusetts	Ciampa, Walter J.	MA Mktshr	Sparr	371 Cambridge Stree, Cambridge, MA	1) "mind's eye" - Lilly 2) X-ed out "no recollection of any other brand"	2004
27								
28 Boston	Cambridge	Massachusetts	Cohen, Fredric	MA Mktshr	Sparr	34 Broadlawn Drive, Chestnut Hill, MA 02467	Lilly only	2004
29 Boston	Cambridge	Massachusetts	Sannecca, John A.	MA Mktshr	Sparr	Stoneham, MA	Lilly only	2004
30 Boston	Cambridge, 3 miles	Massachusetts	Mortenson, David B.	Currie	Steve	3 Priscilla Lane, Winchester, MA	Lilly only	2002
31 Boston	Charleston	Massachusetts	Merlino, Carmen	MA Mktshr	Sparr	9 Hammersmith Drive, Saugus, MA	Lilly only	2003
32 Boston	Chelsea	Massachusetts	Dubin, Harold	MA Mktshr	Sparr	Needham, MA	Lilly only	2004
33 Boston	Cochituate, 20 miles	Massachusetts	Johnson, Benjamin III.	Donovan		no statement in book		
34 Boston	Concord, 19 miles	Massachusetts	Carr, Bob	Olsson	Renee	12 Nancy Road, Concord, MA	Lilly only	2000
35 Boston	Concord, 19 miles	Massachusetts	Foley, Walter	MA Mktshr	Sparr	45 Cressbrook Road, Concord, MA 01742	1) Also stocked Carol & Cederie 2) Lilly was dispensed for 25mg	2004
36 Boston	Dedham	Massachusetts	Levangie, Peter F.	MA Mktshr	Sparr	28 Netta Road, Dedham, MA 02026	Lilly only	2004
37 Boston	Dorchester	Massachusetts	Kalish, Irving	MA Mktshr	Sparr	75 Brookline Avenue, Hull, MA 02045	Lilly only	2004
38 Boston	Dorchester	Massachusetts	Kaplan, Robert M.	MA Mktshr	Sparr	18 Frederickson Drive, Randolph, MA	Lilly only	2004
39 Boston	Dorchester	Massachusetts	Stoller, Irving, H.	MA Mktshr	Sparr	118 Plymouth Drive #1D, Norwood, MA 02062	Lilly only	2003
40 Boston	East Bridgewater	Massachusetts	Berenson, Martin L.	MA Mktshr	Sparr	7 Huckleberry Lane, Sharon, MA 02067-1025	Lilly only	2004
41 Boston	Groton	Massachusetts	Wittren, James	Benardete	Steve	2511 nw 50TH Avenue, Ocala, FL	Lilly only	2004
42 Boston	Gt. Barrington	Massachusetts	Bannon, William	MA Mktshr	Sparr	37 Prospect Street, Gt. Barrington, MA	Lilly only	2004
43 Boston	Housatonic	Massachusetts	Aberdale, Dolores	MA Mktshr	Sparr	22 Linda Lane, Housatonic, MA 01236	Lilly only	2004
44 Boston	Housatonic	Massachusetts	Aberdale, Joseph W.	MA Mktshr	Sparr	22 Linda Lane, Housatonic, MA 01236	Lilly only	2004
45 Boston	Hyde Park	Massachusetts	Fezoco, Alexander R.	MA Mktshr	Sparr	8 Chesterfield Street, Readville, MA 02136	Lilly only	2004
46 Boston	Roslindale	Massachusetts	Abrams, Jason M.	MA Mktshr	Sparr	531 Bay Road, Sharon, MA 02067	Lilly only	2003
47 Boston	Jamaica Plain	Massachusetts	Grossman, Leonard	MA Mktshr	Sparr	15-22 Reservoir Street, Mansfield, MA	Lilly only	2004
48 Boston	Jamaica Plain	Massachusetts	Laham, Gregory H.	MA Mktshr	Sparr	16 Kilronan Road, Westwood, MA	Lilly only	2004
49 Boston	Lawrence	Massachusetts	Pahigian, Lazarus A.	MA Mktshr	Sparr	252 Sutton Hill Road, North Andover, MA	Lilly only	2004
50 Boston	Lawrence	Massachusetts	Porras, Norma	MA Mktshr	Sparr	8 Robinson Circle, Winchester, MA	Lilly only	2004
	Lawrence Methuen	Massachusetts	Leone, Gabriel J.	MA Mktshr	Sparr	11 Adelaide Road, Methuen, MA 01844	Lilly only	2004
51	Teuksburg							
52 Boston	Lowell	Massachusetts	Audet, Robert J.	MA Mktshr	Sparr	109 Flower Lane, Dracut, MA	Lilly only	2004
53 Boston	Lowell	Massachusetts	Audet, Robert J.	MA Mktshr	Sparr	109 Flower Lane, Dracut, MA	Lilly only	2004
54 Boston	Lowell	Massachusetts	Birch, Marie L.	MA Mktshr	Sparr	10 8th Street, Biddeford Pool, ME	Lilly only	2004
55 Boston	Lowell	Massachusetts	Birch, Walter C.	MA Mktshr	Sparr	10 8th Street, Biddeford Pool, ME	Lilly only	2004
56 Boston	Lynn	Massachusetts	Booras, William P.	MA Mktshr	Sparr	10 Westover Drive, Wynnfield, MA 01910	Lilly only	2004
57 Boston	Lynnfield	Massachusetts	Chaggers, John	MA Mktshr	Sparr	8 Forrester Road, Wakefield, MA	Lilly only	2004
58 Boston	Lynnfield	Massachusetts	Levey, George	MA Mktshr	Sparr	47 Holly Ridge Drive, Sandwich, MA 02563	Lilly only	2003
59 Boston	Malden	Massachusetts	Cantillou, Thomas J.	MA Mktshr	Sparr	20 Dianne Road, Medford, MA	Lilly only	2004

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Aaron's Designations	Actual Location and Mileage	State	Pharmacist's Name	CASE	Case Worker	Address	Lilly Only	Statement Date
60 Boston	Malden	Massachusetts	Shechet, Sherwin G.	MA Mktshr	Sparr	31 Baldwin Street, Peabody, MA	Lilly only	2004
61 Boston	Mashpee	Massachusetts	Goldberg, Mark	Stevens	Tom	53 Sneed Drive, Mashpee, MA	Lilly only	2003
62 Boston	Medfield	Massachusetts	Iris, Benjamin			26 Heathstone Drive, Medfield, MA	Lilly only	2003
63 Boston	Melrose, 9 miles	Massachusetts	Putney, Don	Fraser	Renee	20 Riverside Dr., N. Reading, MA	Lilly only	2001
64 Boston	Merrymount	Massachusetts	Nisenbaum, Norman		Sparr	Hull, MA	Lilly only	2004
65 Boston	Milton	Massachusetts	Lourie, Marvin	MA Mktshr	Sparr	12229 Rockledge Circle, Boca Raton, FL 33428-4811	Lilly only	2004
66 Boston	Natick, 22 miles	Massachusetts	Aronson, Melvin	MA Mktshr	Sparr	550 SE 5th Avenue, Apt. S106, Boca Raton, FL	Lilly only	2004
67 Boston	Natick, 22 miles	Massachusetts	Peristere, Richard	Figueroa	Maricel	65 W. Central St., Natick, MA 01760	Lilly only	2003
68 Boston	Natick, 22 miles	Massachusetts	Raddock, Edward S.	MA Mktshr	Sparr	3 Atherton Street, Natick MA 01760	Lilly only	2003
69 Boston	Needham	Massachusetts	Baker, Steven	MA Mktshr	Sparr	21 Trowbridge Circle, Stoughton, MA	Lilly only	2004
70 Boston	Needham	Massachusetts	MacPherson, Earl	MA Mktshr	Sparr	110 Elmwood Road, Needham, MA	Lilly only	2003
71 Boston	New Bedford, 59 miles	Massachusetts	Charpentier, Raymond	Silva	Tom	43 Nauticus St., New Bedford, MA (not a mailing address)	Lilly only	2004
72 Boston	Newton	Massachusetts	Cemach, Henry	MA Mktshr	Sparr	35 Foxhill Drive, Natick, MA 01760	Lilly only	2004
73 Boston	Newton	Massachusetts	Cortell, Saul M.	MA Mktshr	Sparr	36 Rosewood Drive, Stoughton, MA	Lilly only	2003
74 Boston	Newton	Massachusetts	Levine, Robert M.	MA Mktshr	Sparr	106 Sewall Avenue, Brookline, MA	Lilly only	2003
75 Boston	Newton	Massachusetts	Oppenheim, Gordon	Newman	Maricel	705 Boylston St., Boston, 02116		
76 Boston	Newton, MA	Massachusetts	Gordon, Howard	Newman	Maricel	705 Boylston St., Boston, 02116		
77 Boston	Newtonville	Massachusetts	DiBona, Lawrence B.	MA Mktshr	Sparr	169 Washington Street, Wellesley Hills, MA 02481-3121	Lilly only	2004
78 Boston	North & South Eason	Massachusetts	Abbott, Robert	MA Mktshr	Sparr	36 Copperwood Drive, Stoughton, MA	Lilly only	2003
79 Boston	North Groton	Massachusetts	Fish, Howard L.	MA Mktshr	Sparr	5 Meadowbrook Road, Worcester, MA	Lilly only	2004
80 Boston	Palmer, 74 miles	Massachusetts	Gozdowski, Matthew	Schardel	Steve	9 Hunting Lane, Wilbraham, MA 01095-2212	Lilly only	2001
81 Boston	Quincy, 9 miles	Massachusetts	Esterman, Henry I.	MA Mktshr	Sparr	50-56 Broadlawn Park #308, Chesnut Hill, MA 02467	Lilly only	2003
82 Boston	Quincy, 9 miles	Massachusetts	Harrison, Ralph	Mullen, Philbrick, Roing	Tom	25 Hobomack Road, Quincy, MA 02169	Lilly only	2003
83 Boston	Roslindale	Massachusetts	Scollins, William R.	MA Mktshr	Sparr	19 Longshank Circle, Box 1775, North Falmouth, MA 02556-1775	Lilly only	2003
84 Boston	Roxbury	Massachusetts	Gehr, Bernard N.	MA Mktshr	Sparr	20 Marschfield Road, Newton, MA	1) "mind's eye" - Lilly 2) X-ed out "no recollection of any other brand"	
85 Boston	Roxbury	Massachusetts	Gruber, Martin N.	MA Mktshr	Sparr	30 Overlook Road, Randolph, MA 02368	Lilly only	2003
86 Boston	Shrewsbury	Massachusetts	Leroy, Stuart C.	MA Mktshr	Sparr	189 Shrewsbury Street, Holden, MA	Lilly only	2003
87 Boston	Somerville	Massachusetts	Stone, Robert	MA Mktshr	Sparr	15 Hattie Lane, Billerica, MA 01821	Lilly only	2004
88 Boston	Somerville	Massachusetts	Warren, Daniel E.	MA Mktshr	Sparr	52 Winter Street, Leominster, MA	Lilly only	2004
89 Boston	South Braintree	Massachusetts	Young, Claude R.	MA Mktshr	Sparr	157 River Street, Braintree, MA 02184	Lilly only	2003
90 Boston	South Station & North Station	Massachusetts	Baum, Alfred	MA Mktshr	Sparr	276 Bainbridge Street, Malden, MA	Lilly only	2004
91 Boston	Southbridge, 62 miles	Massachusetts	Peloquin, Charles	Dibello		2222 Ocean Shore Blvd., Ormond Beach, FL	Lilly only	2000
92 Boston	Springfield	Massachusetts	Maichot, Henry J.	MA Mktshr	Sparr	96 Nassau Drive, Springfield, MA 01129	Lilly only	2004
93 Boston	Wakefield	Massachusetts	Black, Burton	MA Mktshr	Sparr	9661 Shadybrook Drive, Boynton Beach, FL	Lilly only	2004
94 Boston	Waltham	Massachusetts	Grobman, James	MA Mktshr	Sparr	9 Alum Drive, Randolph, MA	Lilly only	2003

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95 Boston	Wellesley Hills	Massachusetts	Schmidt, Donald	MA Mktshr	Sparr	49 MacArthur Road, Natick, MA	Lilly only	2003
96 Boston	West Bridgewater	Massachusetts	Cohen, David J.	MA Mktshr	Sparr	494 East Street, West Bridgewater, MA	Lilly only	2002
97 Boston	West Newton	Massachusetts	Kelley, Robert D.	MA Mktshr	Sparr	138 Manzella Court, Rockland, MA 02370	Lilly only	2004
98 Boston	West Newton	Massachusetts	Margolis, Jon	MA Mktshr	Sparr	265 Upland Avenue, Newton, MA 02461	Lilly only	2003
99 Boston	West Upton, 38 miles	Massachusetts	Wood, Patricia	Fastino	Steve	157 Laurelwood Dr., Hopedale, MA	Lilly only	2002, 2004
100 Boston	West Upton, 38 miles	Massachusetts	Wood, Robert	Fastino	Steve	157 Laurelwood Dr., Hopedale, MA	Lilly only	2002, 2004
101 Boston	Westfield	Massachusetts	Cohen, Sol D.	MA Mktshr	Sparr	7679 Lemonwood Street, Boynton Beach, FL 33437	Lilly only	2004
102 Boston	Whitman, 23 miles	Massachusetts	Duval, John H. (2)	Seale, Garner and Barba	Renee	250 Sportsman's Trail, Whitman, MA	Lilly only	1974
103 Boston	Wilbraham, 81 miles	Massachusetts	Ziembra, Irene	Hartl	Steve	5 Sunnyside Terrace, Wilbraham, MA	Lilly only	2001
104 Boston	Winchester, 9 miles	Massachusetts	Flaherty, William	Cook-Melloy / Newman	Steve / Maricel	19 Mott St., Arlington, MA	Lilly only	2004
105 Boston	Worcester, 46 miles	Massachusetts	Arahelian, Geraldine	MA Mktshr	Sparr	19 Lake Street, Shrewsbury, MA 01545	Lilly only	2004
106 Boston	Worcester, 46 miles	Massachusetts	Haig, Jr., David D.	Russell	Tom	Worcester County is only address on statement	Lilly only	not dated
107 Boston	Worcester, 46 miles	Massachusetts	Hurwitz, Nason A.	MA Mktshr	Sparr	19 Cardinal Road, Worcester, MA	Lilly only	2003
108 Chicago	Moline, 174 miles	Illinois	DeWilde, Paul	Allen	Alex	2314 9th St., Silvis, IL 61282	Lilly only	2002
109 Chicago	Moline, 174 miles	Illinois	Polier, Bruce			2312 Carriage Lane, Moline, IL	Lilly only	2003
110 Chicago	Peoria	Illinois	Bitner, Morris			2711 N. Vierria, Peoria, IL	Lilly only	2003
111 Chicago	Peoria	Illinois	Bogard, Richard H.			824 W. Fairlawn Lane, Peoria, IL	Lilly only	2003
112 Chicago	Peoria	Illinois	Carham, John K.			2508 N. Rockwood, Dr., Peoria, IL	Lilly only	2003
113 Chicago	Peoria	Illinois	Donovan, Arthur E.			608 Highview Road, E. Peoria, IL	Lilly only	2003
114 Chicago	Peoria	Illinois	Tingleff, Richard W.			312 Glencrest, Peoria, IL 61614	Lilly only	2003
115 Chicago	Washington	Illinois	Maier, William E.			114 Brookwood C., Washington, IL	Lilly only	2003
116 Conn	Bridgeport, CT	Connecticut	Gerstl, Joseph	Almeida		9833 Majestic Way, Boynton Beach, FL 33437	Lilly only	1991
117 Conn	Bristol	Connecticut	Kalinowski, George			95 Norwood Road, Bristol, CT	Lilly	2002
118 Conn	Bristol, CT	Connecticut	Azzoliti, Donald	Dimanche	Maricel	29 Donna Lane, Forestville, CT 06010	Lilly only	2002
119 Conn	Milford, CT	Connecticut	Downing, Francis X.		Sparr	35 Richmond Drive, Lee, MA 01238	Lilly only	2004
120 Conn	Putnam, CT	Connecticut	Malito, Ralph A.	Harrison		145 Savin Street, Putnam, CT	Lilly only	1990
121 D.C.	D.C.	D.C.	Balotin, Louis	Sorells		3343 S. Leisure World Blvd., Silver Spring, MD	Lilly, but may have stocked a discount brand also	1980
122 D.C.	D.C.	Washington, D.C.	Barshai, Norman	Barshai		no address on statement	personally dispensed Lilly for his wife	not dated
123 D.C.	D.C.	Washington, D.C.	Bialek, Sam	Tidler		statement missing from book		
124 D.C.	D.C.	Washington, D.C.	Hobbs, Vera	Feldman and Bass		5 Brandywine Street., Washington, D.C. 20032	Lilly	1992
125 D.C.	Fairfax	Virginia	Kipps, John William	Mayo		5206 Pimlico Ct., Fairfax, VA	Lilly only	1995
126 D.C.	Gaithersburg, MD. 27 miles	Maryland	Friedman, Ben	Mopsik		8510 Wilkesboro Lane, Potomac, MD	Lilly only	1991
127 D.C.	Hyattsville, MD. 7 miles	Maryland	Berlin, Alvin	Cloey-Palozzi	Steve	15115 Interlocka Drive, Apt. 1009, Silver Spring, MD	Lilly only	2001, 2003
128 D.C.	MD Suburbs	Maryland	Goodman, Victor	Augusterfer	Steve	12515 Eastbourne Dr., Silver Spring, MD	Lilly only	2002

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129 DC	DC	DC	Sadel, Jack	Simon, B.		3701 North Country Club Drive, Apt. 305, Miami, FL 33180	Lilly	1987
130 L.A.	?	Louisiana	Robinson, Freddie			no address on statement	Lilly only	2002
131 L.A.	Baton Rouge, LA	Louisiana	Bolton, Howard	Terrebonne		417 West Woodruff Drive, Baton Rouge, LA 70808	Lilly	1989
132 L.A.	Cut Off, LA	Louisiana	LeBlanc, John N.	Terrebonne		no address on statement	Lilly only	1997
133 L.A.	Marrero	Louisiana	Ruiz, Alvin			2042 Spanish Oaks Drive, Harvey, LA 70058	Lilly only	2002
134 L.A.	New Orleans	Louisiana	Doucette, Edmond			10021 Flossmoor Drive, New Orleans, LA 70127	Lilly only	2002
135 L.A.	New Orleans	Louisiana	Roy, Diane			7401 Camberley Drive, New Orleans, LA 70128	Lilly only	2002
136 L.A.	Thibodaux, LA	Louisiana	Arboneaux, Sterling	Terrebonne		209 Fairfield Drive, Thibodaux, LA 70301-3719	Lilly	1998
137 L.A.	Thibodaux, LA	Louisiana	Birdsall, Walter	Terrebonne		15875 East Main Street, Galliano, LA 70354	Lilly	1996
138 L.A.	Thibodaux, LA	Louisiana	McCollum, John C.	Terrebonne		D&M Pharmacy, 1772 Canal Boulevard, Thibodaux, LA 70301	Lilly only	1998
139 L.A.	Thibodaux, LA	Louisiana	Naquin, Richard L.	Terrebonne		no address on statement	Lilly	1996
140 Misc.	(Goldcamp)	Ohio	Boiman, Richard E.	Hummelndorf, Martone	Tom, Maricel	no statement in book		
141 Misc.	Albuquerque	New Mexico	Reed, Jim	Allen, Connie		Ruidoso, NM	Lilly only	1998
142 Misc.	Belfast, ME	Maine	Gould, Robert	Nealey		RFD #3, Box 464, Belfast, ME 04915	Lilly only	1998
143 Misc.	Cincinnati	Ohio	Keyser, James A.	Keyser	Tom			
144 Misc.	Cleveland	Ohio	Hall, Leroy	Frohnapple	Tom	115 Ichabod Trail, Longwood, FL	Lilly only	2004
145 Misc.	Cleveland	Ohio	Thomas, Russell	Frohnapple	Tom	6059 Myrtle Hill Road, Valley City, OH 44280	Lilly only	2000
146 Misc.	Columbia	Missouri	Asbury, Bettie	Demery		4575 North Route E, Columbia, MO	Lilly predominated	1996
147 Misc.	Detroit	Michigan	Gilbert, Sheldon			29849 Sugar Spring, Farmington Hills, MI 48334	Lilly	2002
148 Misc.	Detroit	Michigan	Mandelbaum, Aaron			24260 Gardner, Oak Park, MI 48327	Lilly	not dated
149 Misc.	Falcon Heights, Ely	Minnesota	Bertulla, Jack	Lenander	Renee	1446 W. Idaho Avenue, St. Paul, MN 55108	Lilly only	2000
150 Misc.	Farmington	New Mexico	Williams, Charles Lewis	Bragg		2765 Ninth Street, Douglas, AZ	Lilly	1990
151 Misc.	Indianapolis, IN	Indiana	Henderson, Gene	Ellison	Steve	1515 North Wellington Avenue, Indianapolis, IN	Lilly only	2001
152 Misc.	Kansas City, MO	Missouri	Jabenis, Lawrence R.	Newman				
153 Misc.	Lancaster	Ohio	Cook, Walter (Wally)	Kihm	Renee	1737 Longwood, Lancaster, OH	Lilly only	2004
154 Misc.	Minneapolis	Minnesota	Cummelin, Roy Clifford	Boyson	Tom	8438 Oakland Avenue S., Bloomington, MN	Lilly only	2000
155 Misc.	Minneapolis	Minnesota	McNeil, Walter	Lenander	Renee	Minneapolis, MN	Lilly only	2000
156 Misc.	Moberly	Missouri	Buntin, Bill	Cirata		no statement in book		
157 Misc.	Moberly	Missouri	Kirk, Ron	Cirata			(1) deals with location of prescriptions; (2) deals w/specific scrip	(1) not dated; (2) 1998
158 Misc.	Moberly	Missouri	Tadros, Sam	Robb		319 W. Reed Street, Moberly, MO	Lilly only	1998
159 Misc.	Oak Park	Michigan	Linden, Louis	Mages	Tom	703 Seven Bridges Road, Moberly, MO		
160 Misc.	Pittsburgh, KS	Kansas	Waltrip, Bill	Galvin		29645 Pine Ridge Circle, Farmington Hills, MI 48331	Lilly primarily	2001
161 Misc.	Roseville	Minnesota	Johnson, Ronald B.	Dobbelmann	Maricel	300 West 6th Street, Pittsburgh, KS	Lilly only	2003
162 Misc.	Shawnee Mission, KS	Kansas	Adams, Gene	Shields				
163 Misc.	St. Louis	Missouri	Gerwitz, John	Wieprecht	Tom	6624 Mastin Drive, Shawnee Mission, KS	Lilly only	1990
						4471 Pershing Row, St. Louis, MO 63108-2507	Lilly only	2002

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164 Misc.	St. Louis Park	Minnesota	Weinkauf, David	Goldstein	Tom			
165 Misc.	St. Paul	Minnesota	Brochin, Joseph	Lenander	Renee	2230 Vale Crest Road, Minneapolis, MN	Lilly only	2000
166 Misc.	St. Paul	Minnesota	Maisel, Stanley	Lenander	Renee	8015 W. 18th Street, Minneapolis, MN 55426	Lilly only	2000
167 Misc.	Waldoboro	Maine	Wooster, Theodore	Bond	Maricel	926 Maine Street, Waldoboro, ME 04572	other than Lilly unlikely	2000
168 NY	Brooklyn	New York	Swedlow, Richard	Burns	Tom	1969 Bay Boulevard, Atlantic Beach, NY 11509	Lilly only	2002
169 NY	Fresh Meadow, NY	NY	Mindlin, Herbert	Gassman	Tom	6732 182nd ST, Fresh Meadow, NY 11365	Lilly	2003
170 NY	Hempstead	New York	Mindlin, Herbert	Gassman	Tom	6736 182nd Street, Fresh Meadows, NY 11365	Lilly only	2003
171 NY	Merrick	New York	Stern, Herbert	Helford		no address on statement	Lilly only	1990
172 NY	North Bergen	New Jersey	Rubin, Daniel	Kaufman	Maricel	300 Winston Drive, Apartment 805, Cliffside Park, NJ 07010	Lilly only	2001
173 NY	Ogdensburg	New York	Hobbs, Jane (Clark)	Liberty	Renee	338 Pray Road, Ogdensburg, NY 13669	Lilly only	2002
174 NY	Ogdensburg	New York	Pagano, Frances	Liberty	Renee	516 Caroline Street, Ogdensburg, NY 13669	Lilly only	2002
175 NY	Rochester	New York	Dean, George	Berman		160 Lackline Drive, Rochester, NY	Lilly only	1998
176 NY	Schenectady	New York	Cafarelli, George	Roberge		1140 Earl Avenue, Schenectady, NY	Lilly only	2003
177 Philly	?	Pennsylvania	Dovberg, Allan	Coy	Steve	2109 Barren Hill Road, Conshohock, PA	Lilly only	2003
178 Philly	Cherry Hill, PA	Pennsylvania	Magaziner, Steven			25 Liberty Lane, Cherry Hill, PA	Lilly only	2003
179 Philly	Erie, 428 miles	Pennsylvania	Reinhold, William	Jaworski-Slihto	Steve	3505 Ellsworth Avenue, Erie, PA	Lilly only	2002
180 Philly	Everett, 195 miles	Pennsylvania	Penn, William	Bonello	Steve	241 Susan Avenue, Hollidaysburg, PA	Lilly only	2004
181 Philly	Glenside, 14 miles	Pennsylvania	Seitzer, Philip			8470 Limekiln Pike, #903, Wyncote, PA 19095	Lilly only	2004
182 Philly	Havertown, 8 miles	Pennsylvania	Bell, Robert			statement missing from book		
183 Philly	Havertown, 8 miles	Pennsylvania	Katz, Marcia	Moyer	Steve	306 Forest Avenue, Glen Ridge, NJ 17028	Lilly only	2001
184 Philly	Lebanon, PA	Pennsylvania	McClellan, H. Ronald			18 Briar Road, Lebanon, PA 17042	Lilly only	2003
185 Philly	Melton, NJ	New Jersey	Jacoby, Robert J.			105 Montpelier Court., Melton, NJ 08053	Lilly only	2003
186 Philly	Philly	Pennsylvania	Abramson, Herbert	Coy	Steve	6238 Everest Street	Lilly only	2000
187 Philly	Philly	Pennsylvania	Brog, Samuel	Coy	Steve	102 Buckley Terrace, Philadelphia, PA 19115	Lilly only	2001
188 Philly	Philly	Pennsylvania	Estes, Jack, D.	Coy	Steve	8470 Limekiln Pike, Wyncote, PA 19095	Lilly only	2004
189 Philly	Philly	Pennsylvania	Goodman, Stanford	Coy	Steve	8470 Limekiln Pike, Apt. 808, Wyncote, PA 19095-2706	Lilly only	2001
190 Philly	Philly	Pennsylvania	Lipschultz, Harvey	Lebens	Maricel	555 Dreshertown Road, Fort Washington, PA 19034	Lilly only	2002
191 Philly	Philly	Pennsylvania	Ostrow, Jacob	Lebens	Maricel	2401 Pennsylvania Avenue, Philadelphia, PA 19130	Lilly only	2002
192 Philly	Philly	Pennsylvania	Pronzato, William			1911 Herlock Road, Flourtown, PA 19031	Lilly only	2003
193 Philly	Philly	Pennsylvania	Rose, Jonas	Gold, T.				
194 Philly	Pittsburgh, 305 miles	Pennsylvania	Kuber, Mort	Giuseffi				
195 Philly	Pittsburgh, 305 miles	Pennsylvania	Rosenfeld, David	Giuseffi				
196 Richmond	Falls Church, 104 miles	Virginia	Miller, Reuben	Caswell				
196 Richmond	Norfolk, 94 miles	Virginia	DiDomenico, Peter J.	Moore, D.		2903 Fallstaff Road, Baltimore, MD 21209	Lilly only	1989
197 Richmond	Petersburg, 25 miles	Virginia	Cooper, William S.	Robinson		142 Lafayette Avenue, Norfolk, VA	Lilly only	1990
197 Richmond	Petersburg, 25 miles	Virginia	Vaughn, James F.	Robinson		3331 Hanes Avenue, Richmond, VA 23222	Lilly only	1992
198 San Fran	Sacramento, 87 miles	California	Malvesti, Robert	Gibson-Rodgers	Renee	19815 Oakland Avenue, Colonial Heights, VA	Lilly only	not dated
						Fair Oaks, CA	Lilly only	2001

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199 San Fran	San Fran	California	Okano, Ellis (incls depo)	Wall	Renee	142 18th Avenue, San Francisco, CA 94121	Lilly	2000
200 San Fran	San Fran	California	Storz, Marshall D. (incls depo)	Wall	Renee	30 19th Avenue, San Francisco, CA	Lilly	2001
201 South	?	Tennessee	Wilson, Guy B., Sr.	Webb		1211 Cedar Place, Johnson City, TN 37601	Lilly only	1999
202 South	Bristol	Tennessee	Parplin, Ron	Krueger		1013 Egypt Road, Bluff City, TN	Lilly only	2000
203 South	Columbia	South Carolina	Bolick, Coleman	Huffman	Tom	254 Ponte Vedra Drive, Columbia, SC	Lilly	2001
204 South	Columbia	South Carolina	Hook, Davis	Huffman	Tom	2827 Hebron Drive, West Columbia, SC	Lilly only	2001
205 South	Jamestown, Livingston	Tennessee	Clark, Malcolm Douglas			555 Villa Drive, Livingston, TN	Lilly only	2003
206 South	Louisville, KY	Kentucky	Buchanan, Jimmy W.	Nevins	Steve	7308 Hunting Creek Drive, Prospect, KY 40059	Lilly only	2001
207 South	Ludlow, KY	Kentucky	Farrell, Bill	Reusch	Renee	79 Sunnymede Drive, Ft. Mitchell, KY	Lilly	2000
208 South	Memphis	Tennessee	Compton, Leonard	Berry		no statement in book		
209 South	Noxapater	Mississippi	Boswell, Webb A.	Martin	Maricel	Noxapater, MS 39346	Lilly only	2002
210 South	Spring Hill, FL	Florida	Principe, William	Manning	Renee	1463 Briggadier Dr., Spring Hill, FL	Lilly only	2003
211 South	Thomaston, GA	Georgia	Grizzard, Martin	Klady		no address on statement	Lilly	1999
212 South	Thomaston, GA	Georgia	Taylor, Carter	Klady		Upton County, Georgia	Lilly	1999
213 South	Winston Salem	North Carolina	Rabil, Ernest	King		no statement in book		
214 TX	Baytown	Texas	Roberts, Kenneth L.	Whitener		2021 Arcadia Loop, Kerrville, TX 78028	Lilly only	2002
215 TX	Houston	Texas	Arner, Ronald K.	Kogen	Steve	1427 Edwards Boulevard, New Braunfels, TX 78132	Lilly only	2001
216 TX	Marshall	Texas	Matthews, Ronnie	Dinkle	Tom	500 Miller Drive, Marshall, TX	Lilly only	2002
217 TX	San Marcos	Texas	Carson, John	Hernandez	Tom	San Marcos, TX	Lilly only	2001
218 WI / WV	Brookfield	Wisconsin	Young, John	Perlberg	Tom	17990 Parish Drive, Brookfield, WI	Lilly only	2001
219 WI / WV	Charleston	West Virginia	Griffith, Roger D.	Brown, K.	Maricel	no statement in book	Lilly only	2001
220 WI / WV	Milwaukee	Wisconsin	Bohn, R. James	Perlberg	Tom	2728 N. 118th Street, Wauwatosa, WI 53222	Lilly only	2001
221 WI / WV	Milwaukee	Wisconsin	Chojnacki, R.A.	Perlberg	Tom	6010 So. 25 Court, ?, WI	Lilly only	2001
222 WI / WV	Milwaukee	Wisconsin	Johnson, Robert	Perlberg	Tom	Wauwatosa, WI		
223 WI / WV	Osh Kosh	Wisconsin	Bartell, Jim	Eskandarani		2095 Point Comfort, Oshkosh, WI	Lilly only	2000
224 WI / WV	So. Milwaukee	Wisconsin	Adamzak, Dan	Perlberg	Tom	27032 So. Palm Lane, Wind Lake, WI 53185	Lilly only	2001
225 WI / WV	Wauwatosa	Wisconsin	Malle, Robert	Perlberg	Tom	3000 N. ?, WI	Lilly only	2001

Ex. 4

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1 Volume: 1

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3 Exhibits: 1-2

4 IN THE UNITED STATES DISTRICT COURT

5 FOR THE DISTRICT OF MASSACHUSETTS

6 C.A. No. 02-CV-11078-RGS

7 -----x

8 ELLEN J. DEAN,

9 Plaintiff

10

11 v.

12

13 ELI LILLY AND COMPANY,

14 Defendant

15 -----x

16

17 DEPOSITION OF PHILIP J. CAFFERTY

18 Friday, August 22, 2003, 11:04 a.m.

19 Foley Hoag LLP

20 155 Seaport Boulevard, Boston, Massachusetts

21

22

23

24 Reporter: Caroline T. Renault, CSR/RPR

00009

1 A. That's correct.

2 Q. How did you get the names of pharmacists to
3 call up?

4 A. Yellow Pages. I went through the Yellow
5 Pages and called the pharmacy and asked for the name
6 of the pharmacist.

7 Q. How did you decide what pharmacies are listed
8 in the Yellow Pages to call?

9 A. I called all of them, all the ones in the
10 Yellow Pages. I completed the Boston, the South
11 Shore, and western portion of the state, the Natick
12 and Framingham areas. I still have others to call.

13 Q. So I'm clear, you went to the Yellow Pages in
14 2003, is that correct?

15 A. Correct.

16 Q. And you found all the pharmacies, is that
17 right?

18 A. I called all the pharmacies listed.

19 Q. And you called all the pharmacies and what
20 did you ask them?

21 A. I told them who I was. My purpose for the
22 research was to find out if they were practicing
23 pharmacists back in the late fifties or early
24 sixties, and if they were, do they recall

00010

1 diethylstilbestrol? If they responded

2 affirmatively, I would ask them what particular

3 brand of DES they were using.

4 Q. Now, do you have a set of questions that you

5 were given to ask these people?

6 A. No. I pretty much was on my own.

7 Q. You were on your own?

8 A. Aaron did not give me questions. Is that

9 what you are asking?

10 Q. Yes.

11 A. No, he did not give me a list of questions.

12 Q. You were informed what you were supposed to

13 find?

14 A. Yes.

15 Q. Did you suggest to any of these people when

16 you called them the names of any companies that made

17 DES?

18 A. No, I did not.

19 Q. Now, let me ask this: Before you were

20 engaged by Mr. Levine about three months ago, had

21 you ever done any market research before?

22 A. Well, part of my responsibility with Lilly

23 was to do market research as far as the different

24 territories I had. Part of my responsibility with

00012

1 A. Well, I didn't -- I would say a lot of them
2 were very young people. They were not even born
3 back in the 1960s, but of those that I spoke to,
4 16 to 17 answered affirmatively they had DES, and
5 everyone of them was Lilly.

6 Q. Mr. Cafferty, I didn't ask that question.

7 Mr. Cafferty, of the people that you
8 spoke to, many of whom were too young to have been
9 practicing in the fifties and sixties, my question
10 to you is how many of them were practicing
11 pharmacists in Massachusetts in the 1960s?

12 A. I would say the 16 to 17 that I referred to.

13 Q. So the 16 to 17 that you referred to is a
14 number that encompasses both people practicing in
15 the fifties and sixties, is that correct?

16 A. Yes, that recall DES. That was my question
17 to them.

18 Q. Have you done any research to find out how
19 representative those 16 or 17 people are of the
20 number of pharmacists who were practicing in
21 Massachusetts in the 1950s and 1960s?

22 A. I don't fully understand that question, Jim.

23 Q. How many pharmacists were practicing in
24 Massachusetts in the 1950s and sixties?

00015

1 the pharmacists who you did speak to about what you
2 were doing.

3 A. I told them who I was.

4 Q. What did you say when you said who you were?

5 A. "Good afternoon. My name is Phil Cafferty.

6 I'm doing some market research. Were you practicing
7 pharmacy back in the late fifties or early sixties?"

8 Q. Did you say for whom you were doing market
9 research?

10 A. I did not identify Aaron Levine, no. I just
11 said I was doing some market research.

12 Q. Did you identify you were doing market
13 research in support of litigation?

14 A. No, I did not.

15 Q. Did you tell anybody that you were, in fact,
16 experienced as a market researcher?

17 A. No, I did not. Not in so many words, no.

18 Q. Did you lead people to understand you, in
19 fact, were an experienced market researcher?

20 A. By the questions I was asking, I could assume
21 they were probably figuring I was a market
22 researcher of some type.

23 Q. Now, before when I asked you about market
24 research, you told me about working for Lilly. Have

00016

1 you ever done any course work at any institution

2 about market research?

3 A. Any what?

4 Q. Course work.

5 A. Horse work?

6 Q. Course work.

7 A. Course work?

8 Q. Have you taken any courses in market
9 research?

10 A. Well, I had one year out in Indianapolis
11 working for Eli Lilly in marketing and one year of
12 market research in marketing plans.

13 Q. We will come to that.

14 I take it your duties in Indianapolis in
15 1972 --

16 A. Correct.

17 Q. -- did not involve doing market research for
18 a particular --

19 MR. LEVINE: I'm going to object. He
20 just said that it did.

21 MR. DILLON: Well, I'm now asking him --

22 A. I did market research for both Keflin and
23 Keflex in 1972. Those were two products I was
24 responsible for.

00020

1 Q. Well, we will come to sales. Let's focus on
2 your market research.

3 A. That I was doing for Mr. Levine, no, I did
4 not.

5 MR. LEVINE: I think he did some market
6 research for Lilly ongoing through some old
7 prescriptions.

8 THE WITNESS: That's what I was trying
9 to get out, but Jim doesn't want to hear that yet.

10 MR. DILLON: I'm talking about the
11 market research in the last three months.

12 THE WITNESS: I was trying to get to
13 that, Aaron, but Jim doesn't want to hear it.

14 Q. That's not true. I want to keep this in
15 order so I can follow what we are doing.

16 A. Okay.

17 Q. What sort of notes do you have about the
18 conversations that you have had?

19 A. Just whether or not the pharmacists had a
20 recollection of the DES and what brand he used.

21 Q. Now, when you asked him about recollection of
22 DES, what do you say? What exactly do you say to
23 them?

24 A. If they said yes, they were practicing

00021

1 pharmacy back in the early sixties rather than the
2 late fifties, I would ask them if they recalled
3 diethylstilbestrol. If they answered in the
4 affirmative, I would ask what manufacturers they
5 carried.

6 Q. And would you ask them what manufacturers
7 they carried in 1954 or in 1961?

8 A. I said late fifties or early sixties. I
9 didn't go back to 1954, but I would say late fifties
10 or early sixties.

11 Q. When you say "late fifties," what do you
12 mean?

13 A. '58, '59 -- '57, '58, '59.

14 Q. Okay. Did you ask these people the
15 wholesalers from which they purchased their drug?

16 A. Some of them volunteered that information.
17 For example, here in Boston, the big wholesalers
18 were Daley, McKesson and Gilman.

19 Q. Did you ask the people that you spoke to in
20 your market research about the wholesalers?

21 A. Some of them volunteered that information. I
22 didn't specifically ask.

23 Q. If they volunteered the information, did you
24 make notes about that?

00022

1 A. On some of them I did, yes.

2 Q. And some of them you didn't, is that right?

3 A. If they mentioned a wholesaler, I probably
4 wrote it down.

5 Q. So in addition to the list of 16 or 17
6 pharmacists, you have got some notes that you took
7 on these conversations, is that correct?

8 A. Not extensive notes, but, you know, if they
9 have used DES, what brand it was. That was the
10 basis of my conversations with them, and for four or
11 five I found out wholesalers.

12 Q. You think four or five, they told you of the
13 wholesalers?

14 A. I believe so. I didn't ask specifically what
15 wholesaler. They said it. That was not part of my
16 agenda.

17 Q. Did you ask these pharmacists if they
18 purchased drugs directly from any pharmaceutical
19 companies?

20 A. In the case of Lilly, they could not purchase
21 directly.

22 Q. I knew that, but I'm wondering if in your
23 interviews you asked the pharmacists you spoke to if
24 they purchased drugs directly from any

00029

1 Q. Okay. Had you seen an earlier version of the
2 report before July 14th?

3 MR. LEVINE: I believe there is a June
4 9th report.

5 A. There was one. There was one. I made
6 corrections on that. This is the final copy.

7 MR. LEVINE: I think there is an earlier
8 report.

9 MR. DILLON: Okay. I will also ask for
10 the June 9th report.

11 (Document(s)/information request.)

12 Q. Now, before we go into Exhibits 1 and 2 in
13 any more detail, I have a lot of questions, but
14 turning back to your market research, did you make
15 any reference to any statistician or any other
16 professional help in determining whether the sample
17 that you had of 16 or 17 pharmacists was of
18 sufficient size to make some real conclusions about
19 the nature of the market for DES in Massachusetts in
20 the fifties and sixties?

21 A. Out of probably 200 pharmacists I called, so
22 16, so roughly 8 percent of the pharmacists I spoke
23 to were around back in the late fifties or early
24 sixties, so what number is statistically

00030

1 significant? Is 8 percent significant?

2 Q. That's my question to you.

3 A. I would think that it would be significant.

4 Q. You think 8 percent would be statistically
5 significant?

6 A. I think so. I am not a statistician.

7 Q. When you say you think so, what is it based
8 on?

9 A. Just the fact it's 8 percent, 8 percent of
10 the population I spoke to.

11 Q. 8 percent of the population you spoke to was
12 there. What is 16 out of 900, the number of
13 pharmacists that might have been practicing in the
14 fifties and sixties?

15 A. Out of 900?

16 Q. Yeah.

17 A. That would be about 1.8 percent probably. I
18 don't have a calculator.

19 Q. Do you think that would be a significant
20 enough number that you could draw conclusions you
21 could rely on from 1.8 percent?

22 A. 16 out of 900 would not be nearly as
23 significant as 16 out of 200.

24 Q. Okay. Well, Mr. Cafferty, you understand

00031

1 that the 200 that you called are pharmacists who
2 were practicing in pharmacy in Massachusetts in the
3 year 2003?

4 A. Correct.

5 Q. Is that correct?

6 A. Correct.

7 Q. So the relevant population that you want to
8 find out about are pharmacists who were practicing
9 in the 1950s and sixties, isn't that right?

10 A. Correct.

11 Q. So the relevant number then is really 16 out
12 of the 600 to 900 pharmacists that were practicing
13 in Massachusetts then, isn't that right?

14 A. However, I have not called 600 pharmacies
15 yet. I probably will when I conclude my market
16 research because I still have quite a bit of the
17 state to call.

18 Q. But at present you agree then that the number
19 of responses you got is not a statistically
20 significant representation of the pharmacists who
21 were, in fact, practicing in the fifties and
22 sixties?

23 MR. LEVINE: I object. That's not what
24 he said.

00032

1 MR. DILLON: If it's not what he said --

2 MR. LEVINE: He is not a statistician.

3 A. That's what I said.

4 Q. You are not a statistician?

5 A. That's what I said.

6 Q. You have no idea whether 16 out of 900 is

7 adequate or not?

8 A. I'm not sure if that is a significant number.

9 I'm not a statistician. I'm a market researcher and

10 a pharmacist.

11 Q. Have you made -- have you dealt with anybody

12 who could help you to find out if the 16 you got

13 are, in fact, a representative group from the

14 pharmacists that were practicing in the 1950s and

15 1960s?

16 A. Have I? I have not dealt with anybody yet,

17 but I'm sure I could find a statistician that could

18 tell me if it was a significant number.

19 Q. Do you intend to do that?

20 MR. LEVINE: It wouldn't be his

21 intention. It would be my intention, and we intend

22 to do that.

23 MR. DILLON: Okay.

24 Q. In addition to just the numbers of

00038

1 Q. But with respect to the market research you
2 have done, I take it you haven't made any inquiry as
3 to whether the DES that those pharmacists remember
4 were 5 and 25 or not, is that right?

5 A. Correct.

6 Q. So as far as your market research goes, they
7 could have been talking about any dosage of DES,
8 isn't that right?

9 A. They could have been. However, I suspect
10 it's primarily the 5 and 25.

11 Q. But that's your suspicion, is that right?

12 A. Right. Only my own market research.

13 Q. If I wanted to cross-check what you have done
14 so I could try and figure out if, in fact, what you
15 have done is recorded accurately, how would I do
16 that?

17 A. I suspect you would have to call the same
18 pharmacists I called and talk to the same people I
19 talked to. I will send you that list.

20 Q. Okay. Is there anything else I would need to
21 do to know what questions you asked?

22 A. I have told you basically the kinds of
23 questions I have asked. I have identified myself,
24 told them I was doing some market research, inquired

00039

1 if they were practicing in the late fifties or

2 sixties, and if they had been, do they recall what

3 kind of diethylstilbestrol they dispensed?

4 Q. Okay. Do you know if you have an error rate

5 in the methodology you have used for your market

6 research, plus or minus?

7 A. I can only go on what these pharmacists told

8 me. As far as error rate, I would have to say my

9 information is 100 percent accurate. Why would they

10 lie to me?

11 Q. They may not lie to you. Do you know if

12 they, in fact, are accurate in their recollections?

13 A. For the most part. If they said they have

14 been practicing during that time period, when I

15 asked them what brands of DES they used, they

16 responded spontaneously, immediately that it was

17 Lilly.

18 Q. Do you intend to publish the market research

19 that you have done?

20 A. Publish it in a journal?

21 Q. Anyplace.

22 A. I have no intention of publishing unless

23 Aaron does. I'm not a publicist.

24 Q. What are the steps you are going to take next

00041

1 Q. Mr. Cafferty, I have a limited amount of
2 time. I'm not sure I am done with the methodology
3 that you are using, but let me move on because I
4 want to cover some things in this limited window of
5 two hours. Let me ask you about your educational
6 background.

7 A. Okay.

8 Q. I take it that you graduated from high school
9 in 1957, is that correct?

10 A. Correct.

11 Q. What high school was that?

12 A. LaSalle Academy, Providence, Rhode Island.

13 Q. Now, when you were in LaSalle Academy in
14 Providence, Rhode Island, what courses did you take?

15 A. I was in the science curriculum, so biology,
16 chemistry, I think zoology. It was a science
17 curriculum, whatever that entailed. I didn't have
18 any kind of typing. I missed out on that stuff,
19 unfortunately.

20 Q. And I understand you then went to pharmacy
21 school --

22 A. Yes.

23 Q. -- at the University of Rhode Island?

24 A. Right.

00042

1 Q. Is that right?

2 A. Right.

3 Q. You graduated in 1961?

4 A. Correct.

5 Q. Okay.

6 A. I was going to say the first year I started
7 down at the University of Rhode Island was 1957.

8 That was the first year I was at URI. I went to the
9 Providence College of Pharmacy in Providence. Back
10 then a person starting pharmacy school, more than
11 likely his father owned a pharmacy, so four years
12 later he graduated and became a pharmacist. When I
13 started back in '57, 27 of us started my freshman
14 year, and at the end of four years only three out of
15 27 graduated. Another five or six stayed on for an
16 additional year. I felt very good about that.

17 Q. Okay. Do I take it then that you got a
18 license as a pharmacist in 1961, is that right?

19 A. Correct.

20 Q. And that would have been a license in the
21 State of Rhode Island, is that correct?

22 A. Right.

23 Q. Do I understand correctly that until you were
24 a licensed pharmacist, you were not allowed to fill

00052

1 Q. Where did you do your active duty?

2 A. Fort Dix for basic training and Fort Sam

3 Houston in Texas for my medical training.

4 Q. You said for your medical training?

5 A. I was a corpsman. I spent about a year and a

6 half in the Army and transferred to the Air National

7 Guard, and I spent one summer in Camp Drum, New

8 York. I was in the Howitzer Battalion. I

9 transferred to the National Guard, basically, Otis

10 Air Force Base, which was a lot better than Camp

11 Drum, New York.

12 Q. And when you finished your active duty, did

13 you go back to the Thorpe store?

14 A. Yes, I did.

15 Q. So basically from 1961, when you graduated,

16 to 1965 punctuated by approximately a year of

17 active --

18 A. Six months.

19 Q. -- active duty --

20 A. Yeah.

21 Q. -- you were at the Thorpe store in East

22 Greenwich?

23 A. That's right. I also worked part time at

24 Ivey Apothecary in Providence.

00053

1 Q. You have to tell me that again.

2 A. I worked at I V O R Y Apothecary. Actually,

3 it's I V E Y, because it was close to Brown

4 University.

5 Q. So this is after you completed active duty?

6 A. Yes.

7 Q. Sometime between '62 and '65 you worked part

8 time at Ivey Pharmacy?

9 A. Yes.

10 Q. This was when you were a pharmacist?

11 A. Yes.

12 Q. So you were filling prescriptions there?

13 A. Yes.

14 Q. How many hours did you work at the Ivey

15 Pharmacy?

16 A. Probably 15 to 20 hours a week. I was

17 getting ready to get married and wanted some money.

18 And another 40 at Thorpe.

19 Q. You worked 40 hours --

20 A. 40 or 42.

21 Q. At Thorpe?

22 A. Yeah.

23 Q. In 1965 you applied to Lilly to become a

24 sales rep, is that right?

00054

1 A. Yeah.

2 Q. Now, up until 1965 I take it from what you
3 said that you had no experience in any pharmacies
4 outside of the Thorpe Pharmacy and part time at the
5 Ivey Pharmacy, is that right?

6 A. Correct.

7 Q. And you had no experience in any pharmacies
8 in Massachusetts at that point, is that correct?

9 A. Correct. I was not licensed in Massachusetts
10 at that time.

11 Q. Did you become licensed in Massachusetts?

12 A. Yes, I did. I would say probably about 1978
13 when I came back from Florida, the reason being
14 while I was employed by Eli Lilly, even though I was
15 a pharmacist, I did not work part time in the
16 pharmacy. I probably got licensed in Massachusetts
17 in -- 1984 is when I left Lilly, so 1984 is when I
18 became licensed. I could not work part time.

19 Q. I'm sorry. What you are saying is while you
20 worked for Lilly, you worked for Lilly and didn't do
21 any pharmacy work, is that right?

22 A. Correct. It was against company policy.

23 Q. And you believe you were licensed in
24 Massachusetts in about 1984?

00065

1 new drug came out, we would ship a bottle to the
2 pharmacy or whatever a new drug shipment or
3 something like that. Most pharmacies would sign it.
4 If the drug didn't move the first three months, we
5 told them we would take it back, so they had very
6 little invested.

7 Q. Okay. Now, with respect to -- this is 1965
8 when you first started. I take it that you were not
9 detailing DES or diethylstilbestrol --

10 A. No.

11 Q. -- is that right?

12 A. No.

13 Q. Did you have any information about DES or
14 diethylstilbestrol?

15 A. No. I knew Lilly made it. I knew what it
16 was used for, but we never detailed it.

17 Q. Okay.

18 A. I never discussed it with the physician.

19 Q. And in fact, the doctors that you were seeing
20 were not likely OB/GYNs?

21 A. Some were OB/GYNs, but for the most part they
22 were general practitioners and internal medicine.

23 Q. But you didn't discuss DES with them?

24 A. No.

00068

1 A. Correct.

2 Q. And to whom did you call the order in?

3 A. Back then McKesson was the only one.

4 McKesson was the only one in Rhode Island, and in

5 Massachusetts you had Gilman Brothers, Daley. It

6 was Gilman Brothers in Massachusetts, McKesson.

7 Q. So you are saying that those are wholesalers

8 that dealt with Lilly products, is that correct?

9 A. Correct.

10 Q. There were many other wholesalers, were there

11 not?

12 A. Yes. For example, in Rhode Island there was

13 McKesson and Providence Wholesale. Providence

14 Wholesale could not carry the Lilly line because

15 they were a cooperative wholesaler, and Lilly has in

16 their bylaws that they could not sell to a

17 cooperative wholesaler.

18 Q. If a pharmacy in Rhode Island was dealing

19 with Providence Wholesale Drug, they wouldn't be

20 able to get a Lilly product?

21 A. Not until about 1968 or '69, I think, for

22 Providence Wholesale.

23 MR. LEVINE: When you say they ordered

24 their DES from Providence —

00076

1 Q. Your view would be that there would be, you
2 know, 2,500 to 3,700 or so pharmacists in
3 Massachusetts, is that right?

4 A. That's what the numbers are saying, yeah.

5 Q. And having said that, that's what you -- so
6 in 1965 basically from your observation of the
7 territory that you had in around Fall River, your
8 guess would be we are looking at 2,500 to 3,700
9 pharmacists practicing in Massachusetts in '65, is
10 that correct?

11 A. Correct.

12 Q. Now, let's go back to north of Massachusetts.
13 How many internal medicine specialists did you deal
14 with?

15 A. I would say approximately 200.

16 Q. What hospitals did you deal with?

17 A. Salem. Let's see. There was a hospital in
18 Stoneham. It wasn't New England Medical. The
19 Seventh Day Adventist Hospital. I don't recall the
20 name of it. Malden Hospital; Milford Hospital; I
21 guess it was a hospital in Peabody. I think it was
22 St. John's. Just about every town had its own
23 hospital. I would call on all of those hospitals.
24 Q. Okay. And it's clear that you were not

00077

1 detailing DES at that point?

2 A. No, I was not.

3 Q. In fact, Lilly never detailed DES?

4 A. Not while I was employed, no. Not since 1965
5 on.

6 Q. Okay. These specialists in internal medicine
7 would not be expected to be prescribing DES, would
8 they?

9 A. No, they did not.

10 Q. So you didn't have any conversation with them
11 about that?

12 A. No. I never detailed DES at all in my
13 career.

14 Q. Okay. When you went to the hospitals, you
15 were concerned with the particular drugs you were
16 detailing, is that correct?

17 A. Correct.

18 Q. And you weren't concerned with DES?

19 A. No. Back then, you know, when I was north of
20 Boston, I was concerned primarily with Keflin and
21 Loridine in the hospitals and the Darvocet or Darvon
22 compound.

23 Q. I didn't hear.

24 A. I was primarily concerned with Keflin,

00084

1 A. Yes.

2 Q. And not dealing with any retail pharmacies?

3 A. Right.

4 Q. And in 1971 to '72 you were in Boston not

5 dealing with any retail pharmacies, is that right?

6 A. Correct.

7 Q. I do have a number of questions to ask about

8 this, but I do need to go through some parts of your

9 statement that we marked as Exhibit 1. Having gone

10 through -- I'm sorry. We were summing up about

11 where you have been. Through all of this time up

12 until 1972 you didn't make any notes or observations

13 about, written observations -- I'm sorry -- written

14 observations or notes about diethylstilbestrol?

15 A. Correct.

16 Q. And that was not a focus of your interest, is

17 that right?

18 A. No.

19 Q. In fact, it's something you didn't pay any

20 attention to at all, is that correct?

21 A. Correct. We were not detailing it.

22 Q. So let's turn to your statement, Exhibit 1.

23 Now, first of all, would you say that this statement

24 of Philip Cafferty, would you say these are in your

00105

1 A. Correct.

2 Q. That's the sole basis on which you say it's a
3 98 percent certainty?

4 A. Right.

5 MR. LEVINE: I don't think he told you
6 about the statements from other pharmacists.

7 Q. Did you help to get those statements from
8 other pharmacists?

9 A. The 200 that I have, but Aaron has some
10 statements in his office.

11 Q. And those are ones you looked at?

12 A. Yes.

13 Q. You treated each of those statements as if
14 they were accurate?

15 A. Absolutely.

16 Q. And you assumed they were reliable and you
17 could base your conclusions on those?

18 A. Yes, I did.

19 Q. What, if anything, did you do to satisfy
20 yourself that those statements did reflect the
21 accurate recollection of the pharmacists involved?

22 A. I have certainly put my trust and faith in
23 Aaron Levine's judgment. He has good judgment.

24 Q. What, if anything, have you done to determine

00106

1 whether the memories of these pharmacists as
2 reflected in those statements actually reflect
3 what the purchasing or prescribing practices were
4 back in the fifties and sixties?

5 A. I have done nothing.

6 Q. You just relied on the statements?

7 A. Correct.

8 Q. Those came to you from Mr. Levine?

9 A. Correct.

10 Q. Mr. Cafferty, are you aware of any efforts
11 that experts, courts and experts have done to try
12 and determine --

13 A. Who?

14 Q. Courts and experts have done to try and find
15 out about the relative share of the market that
16 different companies had in DES?

17 A. No, I am not.

18 Q. Okay. Are you aware that there was a trial
19 about the relative market shares of DES that was
20 conducted in California?

21 A. No, I am not.

22 Q. You didn't review any of the material there?

23 A. No.

24 Q. And if, in fact, it turned out that the